BEN HARDIN

HIS TIMES AND CONTEMPORARIES,

1884
1852

ILLUSTRATED

"Some books are to be tasted, others to be swallowed, and some few to be chewed and digested."--BACON.

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Ben Hardin

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PREFACE.

Some readers may inquire why the life of Ben Hardin should be written. If it be answered, because he was a great man, the question will, doubtless, be retorted, how, and in what? The chapters that follow must, mainly, answer that question. What men have accomplished, is ordinarily accepted as a measure of their genius and power. That success is an evidence of ability is true, but the limitation of a career by casual or trivial causes, by no means proves lack of merit. Hampdens and Cromwells by scores rest in the obscurity of country church-yards. If one, in a long career, evinces integrity in temptation, strength in trial, courage in difficulty and danger, fortitude in adversity and disaster; and if, to the accomplishment of every high duty, he brings indomitable will and great talents, such a one better earns the laurel of the immortals than the graceless adventurer who "rides through slaughter to a throne."

For a considerable period not far from the year 1820, there were four contemporaries from four different American States, whose names were household words throughout the western country. Between them were wide dissimilarities, and yet there were striking points of likeness between the characters of all. They were strangely alike and unlike. Almost everything that was odd, grotesque, humorous, witty, or sarcastic in the current thought of their day was attributed to one or other of these four. Their real or supposed utterances were everywhere accepted as the mintage of genius. To their slightest deliverances an admiring and partial public gave attentive ear. Between the backwoods Crockett, of Tennessee, and the polished Randolph, of Virginia, was a long step, but somewhere in the interval stood the exuberant Corwin, of Ohio, and the homely-witted

Hardin, of Kentucky. These four in their respective States were the exponents of certain phases of thought and sentiment, represented by no others. To define exactly what these ideas were would, indeed, be difficult. They were not only all ultra in their republicanism, but they were the antipodes of all that was pharisaical, hypocritical, or pretentious in politics or morals. While anything but partisan leaders, they had easy and constant access to the popular heart. Wrong-headed they might be, but their sincerity no one ever doubted. To this sincerity, a close sympathy with the interests and feelings of the great mass of the people, and an uncalculating devotion to whatever they believed to be right, supplemented by unusual talents, may be attributed the renown enjoyed by these men. Crockett was rude and uncouth, but honest and heroic. To the homely sense of the backwoodsman, he joined a spirit as brave and chivalrous as any that followed the banner of the Black Prince against the Infidel. Randolph was a political Ishmaelite. Erratic in everything save his principles, he defied all opposition and scorned all difficulty. With all his impracticability, he was the High Priest of constitutional liberty, sacrificing on its altar private interest and popular favor. Corwin was a genial man, overflowing in his sympathies—loving and beloved by the people among whom he dwelt. His wit and humor flowed in a perennial stream. Like the sun, it illuminated the National Capitol when statesmen were his auditors, and shone not less brightly for the inmates of the humble cabins of the Buckeye State. Crockett, Randolph, and Corwin have all found biographers. In these pages a like service is attempted for Mr. Hardin, under the belief that his name should be written high in the catalogue of notable Americans.

Various persons, at different times, have entertained the purpose of writing Mr. Hardin's life. Among others, the late Colonel Albert G. Hodges, long and favorably known in the State as editor of the Frankfort *Commonwealth*, made a collection of materials for a memoir, in which he had the aid of Mr. Hardin, but, unfortunately for the cause of literature, he postponed his work until overtaken by death. His collection has been lost—a loss that has not been and can not be supplied. Occasional writers have found in Mr. Hardin's life a rich

field of reminiscence which has not been exhausted by frequent gleanings, yet all attempts at a formal biography have, thus far, proved abortive. On the Christmas eve of 1884, as the author sat alone by a bright and cheerful coal-fire, in the small town where his youth had been spent, reflection was busy with the "sad vicissitude of things." Among other matters, it was recalled how many men of genius, talent, and virtue had risen, flourished, and passed away in Kentucky leaving no adequate monument or record to perpetuate their memory. Orators, statesmen, and heroes, not second to any that have adorned any age or country, with names worthy the brightest pages of history, were being forgotten in the State that held their dust. Somewhat illogically, a resentful feeling arose against Boston, for no better reason than because that city was continually calling the muster-roll of its great and worthy children in the hearing of the world. Why should these New Englanders, it was soliloquized, be thus perpetuated, while the memory of Kentucky's great sons hastens to that hopeless oblivion submerging the mound-builders? The sober second thought, however, acquitted the city of poets and philosophers, for, indeed, it was no more than faithful to its own offspring—the highest of maternal virtues. Moreover, it would be ungrateful not to acknowledge the debt which all Americans owe to that great fountain of American thought. What earthly reason, indeed, had Kentuckians for complaint? True they were not ready-writers, nor adept in the arts of literature, but still they could, at least, take mallet and chisel in hand, like "Old Mortality," and freshen and carve again the fading names on tottering and moss-covered grave-stones.

As a sequel to this cogitation, the author, feeling his humble share of responsibility in the matter, resolved to essay something for the rescue and preservation of the memory of his dead countrymen. So it came that a subject was selected, and a circular letter devised and sent, with some misgivings, to many persons requesting information and material for this work, in which its principal subject was thus referred to: "I have selected Mr. Hardin, of all that galaxy of great men among whom he flourished, not because he was necessarily greatest, but

rather because his genius, more than that of any other, was indigenous to his age and its surroundings. He was the product of his time, imbued with its spirit, and in sympathy with its thought and sentiment. His career was a long and successful one. At its outset he became famous. Until the end—at the bar, on the 'stump,' in State and national councils—he extended, widened, and strengthened his early prestige. Always a mighty, intellectual force, he had the good fortune to impress himself and his characteristics on his day and generation as few have done.'

To this appeal a generous response was made—so generous as greatly to encourage the author in the prosecution of his announced purpose. Nothing, it may be observed, has been discovered rendering it necessary to qualify this early, brief, and hasty estimate, but, on the other hand, everything learned of Mr. Hardin has tended to illustrate and confirm it.

How far the query of the reader first supposed may have been answered by what has just been said or by the contents of this volume will not be surmised, whatever hopes may be indulged. Not a little of American biography has been ancillary to political purposes, in which all the shaded lines of character have been studiously penciled out, and thereby a sort of moral emasculation effected. Such literature is objectionable, in that it makes its subjects monotonously great and gifted.

The present work will prove a marked contrast in this respect. The purpose has not been to write the life of a saint, or an impossible or improbable ideal, but rather faithfully to depict the manhood and character of one, who, with a full average of human infirmities, possessed great talents, which he faithfully devoted to his State and generation. To do this adequately, a sketch of his contemporaries and the events in which he and they bore part, was deemed necessary. To Mr. Hardin has been assigned the principal place in this portrayal, yet the noted men with whom he came in contact have had such brief justice done them as the exigency of the narrative would allow.

In justification of this plan it must be remembered that many of the events and personages alluded to are not familiar to the general

reader, and are not discussed elsewhere, or if at all but briefly, and in books not usually accessible. So digressions and details became necessary, which would not have been the case if Kentucky, and the South and West, had had more of a literature of their own.

No effort will here be made to avoid or placate criticism. The work is imperfect, and no one can realize it more keenly and regretfully than its author. Perhaps, one so little equipped for the task; one whom the commoner but tyrannical cares of life left such brief intervals for its performance, should not have undertaken it. Confessing all, however, it is only claimed that, with such opportunity, material, and talent as he possessed, he has labored earnestly and faithfully to add to the store of knowledge something that will please, instruct, inspire, and elevate.

The author makes his grateful acknowledgements for kindnesses from many friends in the preparation of this work. While the anticipation is pleasant that these may, to some extent, find realized whatever expectation may have been indulged, there were others whom he hoped to please, who, during its progress, have been summoned to their final account, and this reflection restrains and tempers the satisfaction he would otherwise experience at the end of his task.

L. P. L.

Owensboro, Ky., May, 1887.

BEN HARDIN.

CHAPTER I.

ORIGIN OF THE HARDIN FAMILY IN AMERICA.

THERE are several families in America bearing the name of Hardin without a common origin. Some trace their source to Great Britain, others to the continent of Europe, while others stop on the hither shore of the Atlantic. That family to which Ben Hardin belonged claims a Huguenot descent. This claim lies somewhat in tradition, but is so well authenticated as to amount to historical truth.

In 1706 it was estimated that by the persecutions of the Huguenots France had lost more than a million of her most active, enterprising, and industrious inhabitants. Deplorable as these persecutions were to their hapless victims, they proved the source of unmixed blessing to the new world. Hither the fugitives came by colonies, by companies, and one by one. The exchange of the comforts and luxuries of France for the privations and sufferings of the wilderness of America was a sore ordeal. Referring to their earlier experiences, it has been said that "the melancholy outline of Huguenot progress in the new world exhibits features of trial, strength, and suffering which render their career equally unique in both countries; a dark and bloody history, involving details of strife, of enterprise and sorrow, which denied them the securities of home in the parent land, and even the most miserable refuge from persecution in the wilderness of a savage empire."* The story of the Floridian Huguenots especially is one of the most pathetic in the early annals of America.

The time of their coming and the point of debarkation had much to do with the happiness and destiny of these emigrants. It has been said of a colony which settled at Mannakin, on the upper James river, in 1699, that it "infused a stream of pure and rich blood into Virginia society." † Transplanted in the new world, the French fugitives became a vigorous, virtuous, and prosperous stock, from which some of the brightest names that adorn its history proudly trace their lineage.

*Lilly and Totem, by W. Gilmore Sims, page —. †Cooke's Virginia, page 309.

After the massacre of St. Bartholemew—though how near that event traditions differ—three brothers, of the name of Hardin, fled from their native France. They first went to England, where their stay was short, thence emigrating to Canada. The considerable French population of the latter, no doubt, attracted them. The rigors of a climate to which they were unaccustomed, however, soon drove them southward. Two settled in Virginia, the third in South Carolina. Subsequent trace of the latter is wholly lost. One of those remaining in Virginia some time afterward fell a victim of the savage Indians. There is no means of fixing the time of these various events with certainty.

The survivor of the brothers in Virginia bore the Christian name of Martin. Of his career and death no record is known. In her childhood, Sarah Hardin, mother of Benjamin, knew him as a very old man, with a dark countenance and French dialect. Either he or a son of his of the same Christian name married a Miss Waters. Miss Waters was of English descent, and of her mother an interesting incident is related by her descendants: In the early colonial days it was usual for emigrants, who had not the means to pay their passage from Europe to America, to be carried by vessels and hired out, or, as it was usually termed, "sold" by the ship-master for a certain period, thus to pay their passage money. There lived a gentleman some distance from the nearest port where such help could be found, who had a large family. His wife, though an energetic woman, told him there was more work than she could do, and that he must go down to the port and buy a woman to help in household labor. Accordingly, he set forth on his journey, and, on his arrival at his destination, went among the passengers to be hired or sold, with a view to selection. His attention was attracted by a little girl, who sat alone and seemed without companions. He spoke to her and found her an interesting child of perhaps twelve years of age. He inquired who she was, and how she came to be there. She replied that she was an orphan; that arrangements had been made for her to emigrate with parties who, at the last moment, had failed to come, and that she had been persuaded by others to come anyway. She had not fully comprehended matters, and only realized her forlorn condition at the end of the voyage.

Her generous hearted listener was so touched by her simple story that he paid her passage and took her home with him. When the good housewife saw what he had done, she at first repudiated the transaction altogether. She had told him, she said, to get a woman to do the

work, and instead he had brought her a child to raise. He might find another home, she said, for her, as soon as he could. She did not even inquire the name of the unwelcome newcomer. Before other quarters had been found for the little girl, her inhospitable hostess started on a visit from home for a few days. As was her custom she gave each of her children their task during her absence. When she had assigned to each sewing or knitting or whatever it was, the little stranger said, "What must I do?" "You do!" said she, abruptly, "what can you do?" The little girl meekly replied: "I can knit a little." The lady softened down so far as to say, "Well, here is a stocking just put on the needles; you knit at that, and maybe some day you will have a pair of stockings." She left home and in a few days returned. Her children were called on to show their work. This done (she had heard the children calling the little girl "Rosa") she told Rosa, rather coldly, to bring her knitting and show what she had been doing. The child brought a pair of stockings nicely shaped and finished, which had been washed and put away in good order. "Who did this?" said the astonished woman. "I did," replied Rosa. "Who taught you how to knit?" "My mother." "Your mother!" said the mistress, seemingly surprised that Rosa ever had such a relation. "Yes, ma'am," replied the little girl. "Where did she live?" Rosa described her English home. Rather quickly she was asked: "What was your mother's name?" She answered. Strange and admirable providence! That child's mother had been the kind benefactor who had taken that woman, when homeless and friendless, and raised her as her own child. The forlorn little Rosa had suddenly found a home. She became a member of the family, and in the end was portioned with the other children. She grew to womanhood and married a man named Waters. A daughter of this marriage was named "Rosa," and she it was who became the wife of Ben Hardin's ancestor.* Captain Philemon Waters, an early settler in Washington county, was a grandson of the little English emigrant.

The name of Hardin does not suggest a Gallic origin. Through what changes its orthography has passed since the Huguenot brothers fled from France is, to some extent, a matter of speculation. As found in public records of a century ago, "e" is substituted for "i" in the second syllable. Such seems to have been, at least, not an unusual mode of spelling at that time. In England, the name spelled this way is frequently met, and has been traced to Hareden or Hare-den as its root. Harding or Hardynge is a common English

*Letter of Hon. Martin D. McHenry.

form, but the Huguenot refugees brought with their French blood a French name. It has been supposed, by some, to have been originally "H'Arding." It can be said, in favor of this supposition, that it, at least, harmonizes the theory of French descent. How easily H'Arding could change to Harding, and the latter to Hardin or Harden is manifest. The theory that the name has passed through a transition state receives corroboration from the fact that the various branches of the family claiming a common origin differ in the orthography of their patronymic. Harding is a common form. Mr. Hardin, however, told General William Preston (on what data is not known) that, anciently, the name was "Hardouin." Persons bearing that name have long been distinguished in the annals of France.

Martin Hardin, of Fauquier county, Va., was either a son or grandson of the Huguenot Martin, perhaps the former. He had a brother residing awhile in Virginia, who, it seems probable, emigrated thence to Pennsylvania. That this brother's name was Benjamin has been suggested, but it is here only put down tentatively. Benjamin (if such was his name) was the paternal grandfather of Ben Hardin.

About 1765, several of Martin Hardin's children, with their families, removed from Fauquier county to George's Creek settlement, on the Monongahela river, in Westmoreland county, Pa. They had not intended to go, nor did they suppose they had gone, beyond the bounds of the Old Dominion. It was afterward discovered, however, that their new home was in Pennsylvania. That this circumstance caused the subsequent emigration to the West has been suggested, and seems probable.

Of Martin Hardin's subsequent life no facts have been discovered, save that he made his will, in 1779, and died in Fauquier county, Va., the year following, leaving considerable estate.* He had several children—three sons, John, Martin, and Mark, and four daughters, Sarah, Lydia, Mary, and Rosannah. The following is a literal transcript of the family record, brought by Colonel John Hardin to Kentucky in 1786:

"Mary Hardin, daughter of Martin and Lydia, his wife, was born October ye 4, 1741.

"Sarah Hardin, was born March ye 10, 1743.

"Lydia Hardin, was born April ye 10, 1748.

"Mark Hardin, was born December ye 1, 1750.

"John Hardin, was born October ye 1, 1753.

*See Appendix, Note A.

"Martin Hardin, was born February ye 1, 1757.
"Rosannah Hardin, was born March ye 9, 1760."

All of these children with their families, between 1785 and 1790, removed to Kentucky, and all but Rosannah settled in the same neighborhood, near what is now the town of Springfield. Mary, the eldest, married Robert Wickliffe, and on his death she married William Robinson. She lived to an advanced age, and was the only one that died childless. Sarah was the mother of Mr. Hardin, and of her mention is reserved for the next chapter. Lydia married Charles Wickliffe, and bore four sons and five daughters. Of the former, the most distinguished were Robert Wickliffe, of Lexington, and Charles Anderson Wickliffe, of Bardstown. Mark and Martin respectively lived to advanced age, and died on the farm which their industry and courage had rescued from a savage wilderness.

John, usually known as Colonel John Hardin, achieved such a career by his daring, fortitude, and discretion as his surroundings permitted. He early learned the use of the rifle, for hunting was an almost universal occupation, and the use of the rifle an indispensable part of frontier education. Indian hostilities soon commenced, and war afforded another demand for his skill. There were few schools, or means of literary culture. Hunting became his pursuit and delight. He was soon inured to hardships and became an expert woodsman. In 1774 he served as ensign in a militia company with Governor Dunmore's expedition against the Indians. October 10th, of that year, he took part in the battle fought at the mouth of the Kanawha, where Cornstalk commanded the Indians. Governor Isaac Shelby, then a young man of twenty-four, and his father, General Evan Shelby, largely contributed to the victory of the colonial troops. It was one of the bloodiest engagements that ever occurred between the whites and Indians, and none was ever more completely decisive in favor of the former.

In August, 1775, under command of Captain Zach Morgan, during an encounter with the Indians, Colonel Hardin was severely wounded. Before his recovery he again joined Dunmore on his march to the Indian towns. After peace with the Indians he prepared for a journey to Kentucky, but was prevented by the outbreak of the war with Great Britain. He then set about recruiting for the continental army and shortly joined it as second lieutenant. In the service he was attached to General Daniel Morgan's rifle corps, which was usually on the lines. He was highly esteemed by Morgan, and often selected for

dangerous enterprises requiring discretion and intrepidity. He declined a major's commission and resigned the service December, 1779.*

In 1780 he came to Kentucky, probably accompanied by his kinsman, General William Hardin, who certainly came West that year. While in the State he entered large tracts of land in the names of and for his brothers, Mark and Martin, his brother-in-law, Benjamin Hardin (father of the subject of this biography), as well as for himself. In April, 1786, he removed his family to Kentucky. He was undoubtedly instrumental in the emigration of his kindred thither. It was that emigration which opened to the family the avenues of success, and part of all the fame that its members have won should be placed to his credit.

In this connection it is proper to refer to another who made the name known and honored by the pioneers, and feared by their enemies at that period. General William Hardin, an uncle of the subject of this work, was a native of Virginia, but afterward a citizen of Pennsylvania. Thence he emigrated to Kentucky. In one of his earliest visits he discovered the lands at Hardinsburg and vicinity, and there made a settlement. Block-houses and stockades were erected, and in 1782 he founded the town of Hardinsburg. In laying it off tradition has it, "his eye was his compass, his chain a grape-vine."†

General Hardin soon became known as a hunter and Indian fighter; he had a large frame, great activity, and strength. He was of dauntless courage and resolution—cool, calm, and self-possessed in face of danger. Skilled in all the details of border warfare, he was a natural leader, and gifted in the art of command. In warfare he acted on the principle that the only effectual way to subdue the red man was to kill him. The pioneers, on account of his warlike proclivities and especial hostility to the red man, dubbed him "Indian Bill." The Indians designated him "Big Bill" from his size.

The date of his birth is lost, but he was between thirty and forty years of age when he came to Kentucky. Some incidents related of him will illustrate the character of the man. One morning early, preparing for a hunt, he fired off his gun at the door of his cabin, and began cleaning it. An Indian, intending to take advantage of his defenseless condition, stepped from concealment behind the chimney, aimed his gun, exclaiming, "Hooh, Big Bill!" It was a fatal pause. Hardin knocked off the Indian's gun, and brained him with his own.

* Collins' History, Vol. II., page 315; Annals of the West by Perkins, pages 338-44, 350, 381.
† Letter from Jack Hardin, Esq.

About 1782, Hardin, in command of about eighty men, engaged in an expedition against a newly-built Indian village on Saline creek, in the present limits of Illinois. The main body of the Indians, about one hundred in number, were encountered near the village, and an obstinate fight took place. At the first fire Hardin was disabled by a shot through the thighs, but disregarding this severe wound—being unable to stand—he sat on a log during the engagement, giving orders and encouragement to his men, with the utmost coolness. After heavy loss on either side, the savages were repulsed. Hardin was transported by his surviving men to the south side of the Ohio, and, finding refuge at Fort Vienna, only recovered after long suffering. On another occasion, while on picket duty near the station, guarding those at work in a field, he was fired upon by Indians and severely wounded in the neck. Only by the assistance of an intrepid girl named McDonald was he enabled to escape his pursuers, and reach the block-house with his life. His ruling passion was hatred of the Indians. He hunted them as a sportsman hunts game. He lived until the country was freed from Indian depredation, and the larger game killed or driven off. He always carried his rifle, hunting-knife, and tomahawk.* His pioneer costume never varied—hunting-shirt, buckskin trousers, and moccasins. After the admission of Kentucky in the Union, he served in its Legislature. He died in old age, and sleeps in an unmarked and unknown grave, near the town he founded.

The causes that induced the emigration of the Hardin family to Kentucky are readily conjectured. The country generally, east of the Alleghenies, was impoverished by the Revolutionary war; a depreciated currency, prostrate trade, absence of markets, products without buyers, and buyers without money, was a distressful combination. Emigration has been the remedy among all people, from a period long antedating that when the children of Jacob fled from Goshen to the promised land, for unbearable, as well as lesser ills.

Accounts of General Hardin's adventures in the Far West (as it was then called) were repeated in the vicinity of his old Pennsylvania home. Colonel John Hardin had returned to tell of the country west of the Alleghenies; to his enterprising spirit there was a charm about the hills and valleys and forests and streams, aye, about its very dangers, that would have escaped the eye of one less intrepid. Not only the Hardins, but other Pennsylvanians, as well also, as their neighbors in Virginia, had their eyes turned hopefully to the West.

*Mr. Collins' History and an address by Wallace Gruelle, Esq., have been freely used in this notice of General Hardin.

In 1784, John Filson, a native of Pennsylvania, published his book, "The Discovery, Settlement, and Present State of Kentucke," which circulated considerably in the Atlantic States. In this work the pleasing exaggerations of rumor received "black and white" confirmation. The author reveled in the beauty of forest and hill and stream and valley. A fertile soil was carpeted with a green sward of wild rye, clover, and buffalo grass. There were trees that supplied "excellent sugar;" the honey locust that made good beer; the coffee tree that bore a "pod in which was inclosed coffee;" and, lastly, a paw-paw tree which bore "a fine fruit much like a cucumber in shape and size, that tasted sweet." These rosy-colored arguments were of themselves irresistible. So it was, whatever the inducement, between 1786 and 1790 a generation of Hardins, with their wives and little ones, quit their homes on the Monongahela in quest of new ones in the distant "dark and bloody ground."

The following reference to the coming of the Hardins to Kentucky is from the pen of the late Mark Hardin, of Shelbyville, son of the patriotic Colonel John Hardin. It was written in 1869, when the writer was in extreme old age, and when, to use his own language—

"Of the male members of the family, like Job's messenger, I am the only one left to make this note of events. These seven children," said he, referring to the offspring of Martin Hardin, of Fauquier, "Virginians by birth, all removed to Kentucky—the last of these, Martin, in 1787—and all but Rosannah settled in the same neighborhood. John Hardin settled on Pleasant Run, a branch of Beech Fork, in April, 1786, then nearly east of what is now Springfield. From his residence a line west will take us to Springfield, about three miles. From his residence in a line inclining to south-west, about half a mile, Martin Hardin settled; same course, about three miles further, Lydia Wickliffe settled; same course, four miles further, Mark Hardin settled. These families settled on their own land—never removed or sold their dwellings, but left them to their heirs. Not one of them ever lost an acre of their land.

"This line of ten miles, reaching diagonally between Springfield and Lebanon, was occupied by the same Hardin family for more than sixty years. Martin Hardin, the youngest of them, died some twenty years since, in the ninety-second year of his age.

"When I last visited him, and we had talked over many of my boyhood and his manhood experiences in life, he said to me: 'Mark, I am now in the ninety-second year of my age. I suppose I am the oldest living man of the tribe, and I never knew a Hardin that was a liar.

"'I never knew a Hardin that was a thief, I never knew a Hardin that was a coward, and your father was the noblest of them all.' The tears then ran down his cheeks as they had done for the fifty previous years whenever he spoke of his brother John after he was killed by the Indians in 1792.

"An entire family there holding their possessions and rearing families will, of necessity, make an impression in the surrounding community.

* * * * * * *

"Of the younger brood I can say, whether of the name of Hardin or of any other name, I know that they are *men*—feel that they are men amongst the wisest and amongst the best.

"It will suit here to state that a few years since my granddaughter, Mrs. Bernoudy, in St. Louis, met with Bishop Spaulding, who was raised near Lebanon, Ky., and hearing that she was of this family, remarked that the Hardins were 'a strong-minded family, but obstinate.'

"Just here let me ask the question, if, in the providence of God, I have been given a strong mind to discern the truth, and integrity of purpose to maintain the right, may I not proudly wear the epithet of obstinacy? Bunyan would call it 'valiant for the truth.' Thus viewed, we accept the soft impeachment as bringing with it no reproach. And, before I leave this branch of the subject, let me say to all of our lineage, whether a Hardin, a Wickliffe, a Helm, a McHenry, a Harwood, a Cofer, or any other name, remember what your old uncle, Martin Hardin, has said of them; and remember, also, that had it not been for the massacre of St. Bartholomew, we, the Hardin family, might now have been Frenchmen instead of Americans.

"In the year 1786, then a boy of four years of age, I was landed in the woods near a spring, some three miles east of where Springfield was afterward built. It was then the District of Kentucky, part of Virginia. Since then the Constitution of the United States was adopted, and has since been accounted of no binding force. Since then the constitution of the Presbyterian church has been adopted and violated. I had in early manhood sworn to support the one, and in mature middle age vowed allegiance to the other. I have, in good faith, endeavored to fulfill my obligations to each of them as God has given judgment and strength to do so. And now, in my eighty-eighth year, to each one of you separately, and to all of us collectively, remember that each of us owes it to ourselves and to each other to maintain the character that has been transmitted to us. When there is a question of right, let us be obstinate in maintaining that right, and let us always be very obstinate in upholding the truth and prove our lineage true."

CHAPTER II.

BIRTH AND EARLY LIFE.

THE parents of Mr. Hardin were Benjamin, Sr., and Sarah Hardin. They were cousins and both natives of Virginia. The father of this Benjamin bore the same Christian name, and was of Huguenot descent. Mr. Hardin's father was a plain, quiet, sensible, honest man, not a little deferential to his wife. He was a typical backwoodsman, brave and hardy, with a strong inclination for Indian fighting—one of the ordinary employments of his day. After his marriage to Sarah Hardin (which occurred in Virginia), they removed northward and located, as it proved, within the limits of Pennsylvania, which was perhaps inadvertent. Here his children were born. In March, 1788, he removed with all his family (save a daughter who had married) to Kentucky, stopping in what was then Nelson, but in that part of which Washington county was subsequently created. His farm, where he settled on his arrival, where he lived (the cultivation of which was his lifelong pursuit), where he died, and where his ashes rest, was two miles from Springfield, adjacent to the public road from that place to Lebanon.

Sarah Hardin, the wife of Benjamin Hardin, Sr., was born in Fauquier county, Va., and there dwelt until she attained young womanhood. The following reference to her early life is from the pen of another:

"In childhood she listened with thrilling heart to the stories of the Huguenots as recounted by her aged grandfather, Martin Hardin, who, a mere youth at the time, fled from France within a few days allowed for escape by the revocation of the edict of Nantes. In old age, on the borders of ninety, with head erect and clear blue eyes brightening and glowing, she told the story to her grandchildren, who asked no greater privilege than to stand by her knee and listen to the reminiscences of her youth—to stories of those revolutionary times that developed strong-hearted women as well as brave men; stories she had to tell of the war with the Indians; of Braddock's defeat; of how she stood with her father on the lawn in front of his house in Virginia watching the messenger of evil tidings go by reeling with fatigue and haste as he urged on his nearly-exhausted horse, to her father's call drearily responding, without slacking his pace, 'The army is defeated

and Braddock is killed,' and of the dread that settled upon the community as the news went through. Proudly she would tell of the War of Independence; that all of her family were true; 'there was not one Tory among them all.'

"After removal to Kentucky one of the first objects to which Mrs. Hardin devoted herself was to supply, as far as possible, the comforts of life left behind. To this end she planted seeds and raised fruit trees—a matter generally neglected by the adventurous but improvident population of the new State. For awhile she shared her orchard products with her neighbors, exhorting them, however, to plant seeds and raise orchards of their own. But these admonitions were long unheeded. 'Plant for yourselves this year,' she would say, 'for at the end of three years if you have not fruit trees you must do without, for we will not give to you after that.' The third year came and the improvident ones came as usual asking their portion of the fruit, although they had planted no orchards. Mr. Hardin would have yielded, but his wife said 'no; what we have said we will abide by.'

"Too conscious of many neglected warnings to remonstrate against this just decision they departed; but young Ben, with the ready sympathy a boy feels in the matter of getting fruit, hied away unnoticed to help them get the forbidden fruit. When he reached it, what was his surprise to find his ever kind father ahead of him, and he chuckled to himself as, hiding, he heard his father say: 'Now, you must plant the seed this year, for Sarah is a woman of her word, and will do what she says.' Well they knew that Sarah would do what she said. They reverenced and depended on her strong nature. In sickness and sorrow she was their best friend; but when she stood before them, tall, erect, proud of her courage, with purity and truth written on every line of her fair face, her clear blue eye flashing so brightly with indignation at wrong-doing, they feared to do evil, for she would look with no degree of allowance upon aught that was not honest and true.

"They resorted to her for advice in sickness until there came to the neighborhood a young physician, who, on acquaintance, she found was qualified to administer the healing art. Then when the neighbors came to her for the unremunerated advice they were in the habit of receiving she told them no; they had a doctor now—they must go to him, and pay him, too, or he would not be able to remain among them."*

Mr. Hardin, though more yielding, was equally kind with his wife. He erected a school-house upon his place and himself taught a charity school during those portions of the year when the children of the poor were released from labor.

The Hardin emigrants were clannish after coming to Kentucky, and much together. Sarah Hardin all her life was regarded by them as the strongest-minded of the family, and was deferred to as such.

*Miss Lucinda B. Helm, in Lebanon *Times*.

She was of great personal beauty and superior intellect. Her complexion was very fair; her hair bright auburn; eyes clear and blue; in person, tall and commanding. She had the nerve and courage of a Cæsar. Moving to Kentucky when it was molested by Indians and abounding in game, she learned to use the rifle, and became a superior marksman; she killed squirrels from the tops of the tallest trees. In old age she taught her grandchildren gunning. She was a great reader, reading daily until within a few days of her death. She became an excellent historical scholar. Her conversational powers were unusually fine. She had enjoyed the best of Virginia society in young womanhood, and at that period associations more refined and intelligent were not found this side the Atlantic. "I have heard her say," writes a granddaughter, "that she was well acquainted with General Washington—had frequently met him in the social circle, and was often his partner at the whist table."*

On the death of her husband (about 1820) she took up her residence with her son Ben, with whom she lived until her death in 1832, in her eighty-eighth year.

The theory asserted by Napoleon and others that it is the mother, rather than the father, that imparts greatness to the child has here another corroboration. It is fancied that between Mrs. Hardin and the imperious spirit of Lady Macbeth a resemblance may be traced. Of the one as well as the other it seems appropriate to say:

"Bring forth men children only!
For thy undaunted metal should compose naught but males."

Mr. Hardin had four sisters, of whom two married husbands named Tobin, another married Andrew Barnett, and the fourth (Rosa) married James McElroy. His brother Martin lived to middle age in Kentucky, in pursuit of agriculture. At the period when Texas was engaged in her unequal struggle with Mexico for independence, many chivalrous souls rushed to the aid of the republic of the Lone Star. Among these were Houston, Milam, Bowie, Crocket, etc. Martin Hardin also went thither, and did important service at the battle of San Jacinto. Afterward, when Texas was free and at peace, he procured title to the land where the battle was fought, and there spent his last days. Warren, the youngest of the family, was a farmer of Meade county, and survived the late civil war. He was noted for integrity and courage. He had fine natural endowments, and if he had had requisite culture, and chosen intellectual pursuits, he would have made his mark.

* Mrs. Kate Riley.

Benjamin Hardin (or Ben Hardin, as he was always called), so christened for his father, and third in descent of the same Christian name, was born at George's creek settlement, on the Monongahela river, Westmoreland county, Pa., February 29, 1784. He was the sixth of the seven children of his parents. He early gave indication of decided vigor of body and mind.

Not unnaturally, he was a favorite in his immediate family, and his most commonplace performances were deemed worthy of note. When the emigrant boat that bore the Hardin family down the Monongahela, in March, 1788, started on its voyage to Kentucky, a married sister, who remained behind, remarked afterward that the last sight she caught of little Ben, then four years of age, he was sitting on a barrel beating lustily on the head of it, unconscious and uncaring whither he went or what the future had in store for him.

LOST IN THE WILDERNESS.

On one occasion a young gentleman of a heroic turn of mind proposed to write Mr. Hardin's biography, and asked for the incidents of his early life. Mr. Hardin thereupon related an adventure of his childhood for the benefit of his would-be biographer. The latter, however, expressing the opinion that he could not make use of such a trivial circumstance, further communication was declined. The rejected adventure was this: When about seven years of age (after removal to Kentucky), he was sent by his mother from his home in

the wilderness on an errand to the house of one of the nearest neighbors, some few miles distant. Road there was none—merely a path, and that dim from infrequent use, yet distinct enough when closely observed.

Having accomplished his mission, on his return, by inattention, he missed his way. He soon found himself in the trackless woods with no conception of the direction of home. In the midst of his perplexity he heard the familiar bell worn by the milch cow that led his father's cattle on the range. Reasoning to himself that by nightfall that cow would return home, or, if she failed, would be sent for, he made his way to her and kept her in sight until she guided him home.

In that period and locality the schoolmaster was abroad but seldom. Ichabod Radley taught at Hardin's settlement, in Nelson county, not far from 1790. Mr. Hardin was one of his pupils and so were Robert and Charles A. Wickliffe and Samuel Haycraft. He also, about the same period, attended a school taught on Cherry Run, in Washington county, by an educated Irishman named Knott—the grandfather of the present governor of the State. One of his schoolmates at that school, the late Rev. Stephen Ray, often spoke of Hardin's slovenliness and neglect of his person in school days, a characteristic never overcome. At one time he attended the school of Dr. James Priestly, at Bardstown. Dr. Priestly was the brother of the distinguished Dr. Joseph Priestly, of England, and enjoyed wide reputation for talents. He afterward taught at Frankfort, and from thence, in 1803, removed to Tennessee, where he became prominently identified with the educational interests of the State, and there he spent the close of life.

Mr. Hardin's brother-in-law, Andrew Barnett, resided in Green county. Barnett had been a soldier in the Revolutionary war, and was a man of considerable estate. He was childless, and this, perhaps, influenced his partiality for the youthful Benjamin. At any rate, the latter spent a considerable part of his leisure in youth with his kinsman, and there had an experience somewhat rare for those days. Barnett was a pioneer in the sport of horse-racing. He kept a stable of fast horses and ran them when occasion offered. Hardin accompanied him and assisted in this business, for which he developed a keen taste. He at the same time learned, as a sort of concomitant, the art and mystery of "old sledge." So expert in this did he become that his brother-in-law freely staked his money on his playing. Mr. Hardin bet but little himself, although exceedingly skillful and successful. In after life he claimed credit for resisting a temptation so

alluring. In September, 1839, when he rode on horseback, from his home at Bardstown to Louisville, to witness the celebrated race between Grey Eagle and Waggoner, few realized how much the passion of his youth was aroused, when, on that occasion, he declined an invitation of Charles M. Thruston to the grand stand, and was criticised for it. It was little imagined how much he felt at home among the jockeys, trainers, and groundlings, with whom he preferred to consort.

"Young Ben stood more in fear of his mother than of his indulgent father," says his granddaughter,* "for in those rude times it took a stronger hand than in these days to guide and mold a robust, strong-minded boy, fuller even than usual of that life and energy which in boyhood are apt to run riot. Quick-witted and daring, he was hard to keep at school, and to hold back from frolic. Evading his indulgent father he was found one day in a billiard-room, watching with interest the game in which he was too young to join. It was Felix Grundy, who, coming in, saw the bright-eyed boy, intently enjoying what might lure him in time. Recognizing him, he exclaimed: 'What are you doing here, Ben?' and persuaded him to go with him and be signed for a year's tuition to an accomplished Irishman, by the name of Barry, who he foresaw would be able to attract and interest the restless mind that revolted from the tramping pedagoguery of the half-taught teacher of the neighborhood. He then went to inform the parents what he had done. The father was inclined to resent this unexpected interference with his family affairs; but the mother, glad that so suitable a teacher had been found for her favorite son, thanked Mr. Grundy, and said he should be kept where he had put him."

Daniel Barry was an Irish refugee who had fled from his country for participating in efforts to throw off the British yoke. He was versed in the languages, an accomplished scholar, and, withal, a polished gentleman. The commission of a homicide, after Hardin became his pupil, although justifiable, compelled him to abandon Bardstown. He was indicted in the district court but was granted, by the Legislature, a change of venue—November 26, 1801—to Danville "on account," said the act, "of the unusual prejudice and party spirit prevailing at Bardstown." He went to Hartford on his acquittal and again engaged in teaching. Hardin followed him thither and assisted in teaching the English branches, and in return was taught Greek and Latin. On the organization of the Circuit Court, in 1802, Barry received from Judge Christopher Greenup the appointment of clerk for Ohio county.

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*Miss Lucinda B. Helm.

His neat and clerkly records are an enduring testimony of his fitness for his office. He built himself a dwelling at Hartford, which is still in fair preservation. Originally built of logs, these have been covered with boards. His love for republican institutions, and his classical tastes as well, are illustrated by the inscription on the wooden lintel over the main entrance: "*Ubi libertas, ibi patria.*"*

Barry resigned his clerkship in about four years. Removing to Hopkinsville, he taught school there. The writer of a sketch of the distinguished Edward Rumsey, a pupil after his removal, styles Barry "one of the famous classicists of Kentucky." Eighty years have left little else to record of this cultured and liberty-loving Irishman.

Mr. Grundy proved correct in his judgment. Mr. Barry's teaching opened a new world to the eager young mind, into which it rushed with avidity. He became studious and acquired that fondness for books that, in after years—in the most active years of his life—was ever one of his most marked characteristics. The active boy, who had formerly entered with such zest into sports, now became so intense a student that his parents began to fear for his health, and for the effect of night study upon his eyes.

There were few more faithful and diligent students. His perceptive powers were excellent, and his memory unusually retentive. He availed himself of the educational facilities within his reach with marked profit and success. "He became," observes one qualified to judge, "well taught in the structure and elements of our own language." Study to him was not laborious. He not only grasped an idea readily, but had that intuitive faculty which enabled him instantly to trace its consequences and relations. He was a lover of books and often quoted from his reading. He was fond of repeating quotations from favorite authors and discussing them. For light literature he had no liking, but delighted in the ancient classics, and among moderns was fond of Burns. History, biography, geography, and works dealing in argumentative discussion, suited better the bent of his mind. Rollin was a favorite historian, and he was fond of Plutarch. Æsop's Fables was another favorite which he re-read once a year. He esteemed Homer above all ancient authors, and his public speeches teem with allusions to the "father of song." As a rule, however, he attached less importance to the author than to the subject and mode of treatment.

In his youth he delighted in outdoor amusements. He was expert in running, wrestling, and jumping. In these he excelled his com-

*This house is owned and occupied by the surviving family of the late Frank Griffin, Esq., a distinguished and successful teacher of Hartford prior to the late war.

rades, with whom he was always a favorite. It is one of the traditions of Hartford that, while a pupil of Barry, he stood on the hill near the jail and threw a stone to Rough creek, a distance of several hundred yards. It seemed miraculous to those who witnessed it. He thus explained this feat to a venerable citizen of Hartford over a half century ago. "I went to the creek, and along the shore I selected a number of thin, soft stones of the kind called 'soap stone.' These I cut in a circular shape, sharpened the edges, making one side concave. Selecting a spot of high ground, the distance they could be thrown seemed surprising to those who had not considered the philosophy of the subject."* "The boy is the father of the man." The habit of bringing his best thought to the subject before him followed him through life, and this, perhaps, is about as nearly as genius can be defined.

Fishing and hunting he loved to excess. He was a fine marksman, and always kept himself supplied with hunting accouterments. These early tastes were never lost. When seventeen years old, he, on one occasion, embarked, with some traders, on a pirogue for a voyage down the Ohio and up Green river. He was in quest of good hunting-grounds, and was duly equipped with rifle, ammunition, etc. He quit the craft below the Long Falls, on Green river, and struck through the woods northwardly. In a few miles, he came to the house of one David Glenn, a well-known pioneer of that region, where he received a hospitable welcome. He spent several weeks hunting very successfully, game being abundant. He was afterward fond of referring to this experience.

Mr. Hardin's youth can not be fully understood without considering, to some extent, at least, the state of the country at that period. The first census (1790) showed seventy-three thousand population in Kentucky. The increase in the preceding five years, it may be safely assumed, had more than doubled the earlier population. The settlers in Jefferson county were more numerous than elsewhere.

Other centers of population were on Licking, Kentucky, and Salt rivers, and their tributaries. Settlements in the Green river region were sparse. When, in 1788, Mr. Hardin's parents came to Kentucky, the inhabitants had but fairly begun to abandon the immediate vicinity and protection of forts and block-houses. Attacks by predatory bands of savages did not cease for many years afterward, yet increase of population and need of larger arable areas made it necessary to dare possible dangers. The vicinity of a spring of pure water was

*Harrison D. Taylor, Esq.

a favorite location for an "improvement," and, in all the details of life, the useful, rather than the ornamental, prevailed. A cabin of logs, one story high, sixteen to twenty feet square, covered with rough boards, with a stone chimney, or one of clay and sticks, and a puncheon floor (if any) was the average style of the dwelling. The number of rooms was increased as necessity demanded, but building materials and architecture were the same. Around the dwelling, the larger timber was deadened and the smaller cut down, and, with the underbrush, was burned. This clearing was enclosed, if at all, by a "worm" rail fence, or one of brush or poles. In a primitive way, the land was plowed and cultivated. Tobacco was planted for shipment, by flatboats, to New Orleans. Other products were such as necessity required: Indian corn, flax, cotton, and some vegetables, the last for food; cotton and flax for home manufacture into necessary clothing. Cattle and hogs subsisted on the "range." Game formed no inconsiderable part of the daily bill of fare. The males of the household improved and cultivated the land, hunted, fished, helped the neighbors, attended musters, or joined occasional expeditions against the Indians. The women and children remained at home, engaged in household affairs, spinning, weaving, sewing, and making the plain and simple wearing apparel of the family. As to the mode of dress, many interesting incidents have been preserved.

The most common head-dress for men (the boys usually went uncovered) was a skull cap made of the furred skins of coon, fox, or beaver. Old John Moseley, a Green river pioneer, related that in his boyhood a man came to his father's wearing a bell-crowned hat—an article he had never seen before. He judged of the shape of the wearer's head by the outward formation of the hat, and he became not a little curious as to how he got it on and off. He scarcely took his eyes off the visitor, and was not a little surprised when the hat was removed to see the head shaped like those who wore skull caps.*

Some of the settlers had a few slaves, and such had larger establishments. Social lines, so far as they existed, were dimly defined. The degree of hospitality universally displayed was never surpassed. The people obtained their ideas from each other rather than from books. A good talker always found listeners, and good talkers abounded. One of the gifts of leadership among the pioneers was persuasive speech.

Social pleasures were not lacking. Young people gathered for dancing. Log rollings, quiltings, and weddings were epochs of

* Letter from Colonel A. M. Stout, of Chicago.

enjoyment. Musters of the militia and annual elections were red-letter days. The entire able-bodied male population attended both. Frequent "shooting matches" determined the champion marksman. The itinerant priest or preacher held religious services in private dwellings in bad weather, and in good occupied the groves—"God's first temples."

Now and then this primitive life was disturbed by the neighboring savages north of the Ohio river. Parties of Indians would stealthily approach the unsuspecting settlers of the wilderness. Horses would be stolen, families would be murdered, barbarously murdered, neither age nor sex being spared. Scalped and mutilated bodies and the ashes where the home once stood were often all that remained to tell their tragic story. The bloodthirsty savage had fled like the wind. Pursuit quickly followed, and it was rare that the mission of vengeance failed.

In the fall of 1786 Colonel John Hardin, formerly mentioned, and eminently a man for the times, led an expedition of volunteers against Indians, who had committed depredations in his neighborhood. The Indians were overtaken; three were killed, but the rest escaped. The same year he was quartermaster in Colonel George Rogers Clarke's expedition to the Wabash. In 1789, among other depredations, a considerable party of Indians stole all of Colonel Hardin's horses, and escaped in safety across the Ohio. This year he was appointed county lieutenant, with the rank of colonel. This gave him command of the militia of the county. In a subsequent expedition he encountered a camp of thirty Shawanees on a branch of the Wabash. He defeated them, with a loss of two killed and nine wounded, and recovered some of the horses he had previously lost. Save that of St. Clair's, it is said he accompanied every expedition against the Indians after his removal to the State. In the spring of 1792 he was sent by General Wilkerson to the Indians of the North-west Territory with overtures of peace. Accompanied by an interpreter, he reached an Indian camp, a day's journey from where Fort Defiance was afterward built. He encamped with the Indians during the night. Next morning they savagely and basely shot him to death. Thus fell one of the most heroic men that ever bore the name of Hardin. He was a man of unassuming manners and great gentleness of deportment, yet of singular firmness and inflexibility. For several years before his death he had been a member of the Methodist church. Hardin county, Ky., and a town, laid out on the spot where he was murdered in Ohio, were

named in his honor.* The courageous life and tragic death of this brave man were full of noble teaching to Kentuckians, and especially full of precious lessons to his kindred.

A vivid picture of these early days is thus drawn by Felix Grundy (once a Bardstown lawyer) in a speech in the United States Senate:

"I was too young to participate in these dangers and difficulties, but I can remember when death was in almost every bush, and every thicket concealed an ambuscade. If I am asked to trace my memory back and name the first indelible impression it received, it would be the sight of my eldest brother, bleeding and dying under the wounds inflicted by the tomahawk and scalping knife. Another and another went in the same way. I have seen a widowed mother plundered of her whole property in a single night; from affluence and ease, reduced to poverty in a moment, and compelled to labor with her own hands to support and educate her last and favorite son—him who now addresses you. Sir, the ancient sufferings of the West were great. I know it. I need turn to no document to teach me what they were. They are written upon my memory—a part of them upon my heart. Those of us who are here are but the remnant—the wreck—of large families lost in effecting the early settlement of the West. As I look around I see the monuments of former suffering and woe. Ask my colleague what he remembers. He will tell you that while his father was in pursuit of one party of Indians, another band came and murdered two of his brothers. Inquire of yonder gentleman from Arkansas what became of his brother-in-law, Oldham. He will tell you that he went out to battle, but never returned. Ask that representative from Kentucky where is his uncle, the gallant Hardin. He will answer that he was intrepid enough to carry a flag of truce to the hostile savages; they would not recognize the protection which the flag of peace threw around him, and he was slain. If I turn to my old classmate and friend, now a grave and potent senator, I am reminded of a mother's courage and intrepidity in the son, whom she rescued from savage hands when in the very grasp of death."

The period of Mr. Hardin's boyhood was the heroic age in Kentucky history. Existing conditions produced a type of men surpassed by no other time or country. The progress of civilization has undoubtedly lowered this exalted standard. An old Kentuckian, long expatriated, yet proud of the early history of the Commonwealth, thus writes the author:

"That there has been a marked deterioration in the men of Kentucky within the last half century seems to me to be a fact too patent for controversy. How is it to be explained? I shall not attempt the task, as nothing better than a plausible theory can be offered.

*Collins' History, Vol. II., page 316.

"More than fifty years ago, in conversation with an old Virginia lawyer, himself a man of marked ability and originality of thought, he remarked to me that as soon as the Virginians in Kentucky quit fighting Indians and betook themselves to stock-raising, the race began to degenerate. This process he considered as then going on, and predicted the time as not far distant when they would be sunk to the level of stock-breeders everywhere. He was an extravagant talker, and his language made little impression on me at that time. I am now inclined to think more favorably of his views, and that there is some hidden incompatibility between stock-raising and the higher flights of the human mind. Solomon seems to have had a perception of the same fact, when he asked: 'What can a man know whose task is of bullocks?'" *

That one's physical surroundings affect character was an opinion of Victor Hugo:

"The configuration of the soil decides many a man's actions. The earth is more his accomplice than we believe. The education of lights and shadows is very different. The mountain is a citadel; the forest an ambuscade. The one inspires audacity, the other teaches craft. In the Alps of Switzerland, rather than the dikes of Holland, would one search for a hero."

Without contrasting them or measuring them by a common standard, it is conceded that the type of the pioneer differs from his descendant of the third and fourth and subsequent generations. The latter with less daring is more intelligent, with less vigor lives longer, with less fortitude is more patient, with less activity accomplishes more. To the pioneer belongs the warrior's laurel—to his descendant the moral and intellectual achievements of peace.

"Peace hath her victories no less renowned than war."

* Letter from Preston Hay, Esq.,of Jackson, Miss.

CHAPTER III.

A LAW STUDENT.

ON entering his twentieth year, young Hardin was fairly educated. He was not only well grounded in the English branches, but had made considerable progress in Latin and Greek. Besides, he had studied much of the more solid literature of the last century. His early promise had been followed by a development of decided mental vigor and strong purpose. It was but natural that he should seek an arena for the abilities of which he was conscious. Already the ambitious talent of the West—that formerly sought employment and renown in arms and adventure—had turned to statesmanship and the law. The legal profession was especially rich in opportunities by reason of the great litigation that deluged the country.

His kinsmen, Robert Wickliffe, of Lexington, and Martin D. Hardin, then of Richmond, had studied law with the well-known George Nicholas, and, though yet young, had already become prominent in the profession. A circumstance like this was not without influence on young Hardin. From Martin D. Hardin he no doubt received advice and encouragement as to his future. So it was, whatever the cause, that in April, 1804, he entered the law office of the latter at Richmond, as a student.* Of his experience while there little is known. That town, first settled in 1785, was then inconsiderable in population and primitive in manners. It was chiefly important as the seat of justice for the county of Madison—an honor rescued surreptitiously from a rival town—Milford. The modern Richmond has forgotten its rival in the enjoyment of an enviable prosperity—a prosperity little anticipated by those who founded the village on the Town Fork of Dreaming creek. But Madison county was then, as it has always been, the fairest among her sisters. Fertile as a garden, abounding in wealth, rich in tradition, distinguished as the home of talent and genius, noted for its brave men and beautiful women, it has ever stood for the best type of all that has given fame to Kentucky. In the year 1800, of the forty-seven counties in the State, Madison ranked fourth.

* Mr. Hardin's Owsley speech.

It was amid such surroundings that Martin D. Hardin began his short but brilliant career. He was the eldest son of Colonel John Hardin, was born in Pennsylvania in 1780, and in early boyhood emigrated with his parents to Kentucky, where he grew to manhood. He was admitted to the bar when twenty years of age. He began public life as a member of the State Legislature in 1805, and rapidly increased his reputation for talents. He was not only a scholarly lawyer, but of exalted moral worth.* The influence of so skillful and excellent a teacher upon so receptive a student, for good, can not be readily overestimated.

At that period in the history of the profession in Kentucky its leaders were usually not without one or more students in their offices. The law student not only enjoyed the use of his preceptor's library, but had the benefit of counsel and instruction. The course of instruction consisted of oral examinations, explanations of legal principles, and directions in the forms of pleading and conveyancing. Professional teachers in universities and law schools have since supplanted, in a large degree, the old mode of teaching the law in the West. It is, however, doubted if any seat of learning ever graduated from its halls a larger average of well-equipped lawyers than were those that took their course in the office and under the instruction of the justly-celebrated George Nicholas, of Lexington.

There were no public law libraries at that day in Kentucky. Legal publications in the United States were few and of little importance. Story was yet an experiment as a young lawyer, and Kent did not commence his "Commentaries" until nearly twenty years later. American authors were scarce, and, for the most part, they contented themselves with annotating reprints of English works. It is doubtful if the Year books of England or the works of Glanvil, Bracton, Britton, or Fleta, or even the less ancient treatises of Stamford, Cromton, or Lambard and Dalton were to be found in any library in Kentucky in 1805. As the student was being inducted into the mysteries of the legal science, and by way of a first degree had his spirit broken on the wheel, as it were, or, in other words, was set at "Coke upon Littleton," it may be doubted if he regretted anything more ancient. The following books were usually found in the libraries of the best equipped lawyers: Tucker's Blackstone, Adams or Tillinghast on Ejectment, Tidd's Practice, Espinasse's Nisi Prius, Hale's Pleas of the Crown, Foster's Crown Law, Gilbert's Evidence, Bacon's Abridgment, Fonblanque's Equity, and Noy's Maxims. To these were often added a

*Collins' History, Vol. II.

miscellaneous collection of English, Irish, and Scotch reports, the eight or ten volumes of Virginia reports, the four volumes of Dallas, and the case law of Kentucky then embraced in Hughes and Sneed's respective volumes. The Virginia Body of Laws, and Bradford's Collection of Session Acts comprised the statute law. The law library when thus well equipped was the exception rather than the rule, and through such a mass of incongruous learning the student was expected to struggle for two or three years before he was considered ready to practice.

There is authority for saying that at that period the law, especially in Kentucky, was a difficult science. The General Assembly in 1801 expressed the opinion that the criminal laws were so complex that it was impossible for the people to read and understand them. To remedy this evil that body appointed two revisors to fully "delineate" the criminal laws, thus "to inform the public mind and facilitate the administration of justice."

The gentlemen to whom this task was entrusted were Harry Toulmin and James Blair, both then residents of Frankfort. Toulmin was a Baptist preacher, who had been prominent in public affairs from the organization of the State. He had published a history of Kentucky in 1792, and when James Garrard was elected governor he appointed Toulmin his secretary of State. The governor (differing in this respect from some of his successors) was also a Baptist minister. In 1805 Toulmin was appointed by President Jefferson to a Federal judgeship in Mississippi territory. In 1807 he published a digest of the laws of that territory. "The last public record of him," says Mr. Lynch, in "Bench and Bar of Mississippi," "is a correspondence, held in 1813, between him and Governor David Holmes, in regard to organizing and equipping the territorial troops in anticipation of the approaching Creek war, after which he passed from the stage of public affairs and carried with him into his retirement the meed of a life adorned with a conscious and acknowledged benefaction." His death occurred in 1815.

The forefathers of James Blair were the founders of Princeton college, where he was educated. Coming to the West, he became the first attorney-general of Kentucky. He was afterward appointed district attorney, for which favor he was indebted to his wife's kinsman, John Breckinridge, attorney-general under Mr. Jefferson. Mr. Blair was a great student—the loss of a leg precluding him from participating in the active life of the pioneers. He was the father of Francis

P. Blair, who went from Kentucky to Washington during Jackson's administration and won distinction by the spirited manner in which he conducted the *Globe* newspaper at that period.*

The revisors, under authority of the Legislature, published in 1804–5, in three volumes, "*A Review of the Criminal Law of the Commonwealth of Kentucky.*"

To render this work more generally useful, the legislative act had provided that no abbreviations nor any Latin or French phrases should be used. The authors virtuously eschewed the proscribed abbreviations and phrases, but admitted difficulty in substituting corresponding terms for the "cant" names of some of the writs. This was among the earliest attempts at codification in the United States. It might be inferred from this solicitude for the public understanding of the criminal law, that, in regard to civil matters, the Legislature would frame its statutes in the most perspicuous and unmistakable language. But the very reverse of this was true. Of all the involved and complicated systems, whereby an honest and confiding people were robbed of homes and fortunes, the Kentucky land laws may be set down as most striking and peculiar. It was a system that expatriated Boone and beggared Kenton. "The claims to land in this State," truly observed Chancellor Bibb in 1815, "are found in statutes which leave very much to be supplied by the discretion of the judges." As the decisions of the court of last resort were but meagerly published, and on this account either unknown or imperfectly understood, the inferior courts were driven to formulate rules to eke out the insufficient statutes. It resulted that they varied with every change of tribunal. Not unnaturally, this state of affairs caused popular discontent. In his dedication to the first volume of his reports, Bibb thus reproves the murmuring people: "But you complain of the multiplicity and intricacies of the laws already published. Do you want a code of laws that every man can carry about him and understand without study?" If the want existed it was one not to be supplied. The difficulty was to understand the law even by study. The assurance that a multiplicity of laws is inseparably connected with political and civil liberty did not, to the plain citizen, afford justification for their hopeless confusion. The student was little enlightened by text-books or by adjudications outside of the State. To learn the art and mystery of "entries, notoriety, diligence, pre-emptions, settlements and settlers, and certificates," the student had not only to read the statutes, and their exposition by the Appellate Court, but was compelled to

* Letter of Mrs. Admiral Lee.

attend the sittings of the inferior courts, observe the trials therein, and witness the working of the system. The student who sought to be a "land" lawyer realized the quaint expression of Lord Coke: "The artificial reason and judgment of the law, which law is an art which requires long study and experience before a man can attain to the cognizance of it." It was remarked by a good lawyer at that day that "students avoided the doctrine relating to land titles in the State as a tedious drudgery."

It is, however, to be recorded of Mr. Hardin that he gave this branch of the science his especial and successful attention. Of his modes of study, or as to the history of his student life, very few or no facts are preserved. Cotemporary students usually followed the suggestion of Blackstone, and made notes of reading, and regaled themselves therewith in the intervals of study. The more ambitious digested these notes in books—a laborious but helpful exercise.* But with any and all devices to facilitate his progress, the student found no "royal road" through his difficulties.

A Bardstown colleague of Mr. Hardin thus spoke of his own early tribulations: "I read and read for sixteen hours out of the four and twenty; but the more I read the more I became aware of my deficiencies. It seemed as if the wilderness of knowledge expanded and grew more perplexing as I advanced. Every height gained only revealed a wider region to be traversed, and nearly filled me with despair. I grew moody, silent, and unsocial, but studied on doggedly and incessantly."†

Laborious though his life undoubtedly was at this period, yet it was not devoid of pleasing incidents. "At the April Circuit Court in Madison county, in 1804," says Mr. Hardin, "I became acquainted with William T. Barry, Samuel Woodson, George M. Bibb, John Pope, and William Owsley. I was humble and obscure. These gentlemen paid me some attention. I was gratified with their notice of me. Their little acts of kindness won my youthful heart when all alive to first impressions." ‡

Of these early friends Hardin was justly proud. Afterward they all had successful careers, and wrote their names high on the scroll of fame. Already they were in full practice at the bar. Pope, popularly known as one-armed John Pope, afterward as Governor Pope, was thirty-four years of age, and had represented Shelby county in the

* Ben Chapeze, a Bardstown lawyer, a sketch of whom will be found in a subsequent chapter, left a ponderous manuscript volume of such notes.

† Governor W. P. Duvall.

‡ Mr. Hardin's Owsley speech.

Legislature. Bibb, then practicing at Lexington, was in his twenty-ninth year. Coming from Virginia in 1798, the interval of six years had sufficed to raise him to the front rank in the profession. Owsley was two years and Barry one year older than Hardin, and both were bright and ambitious. Little else is preserved of Woodson than that he afterward served in the State Legislature and in Congress. These all belonged to that flower of Virginia youth that gave such luster to the early history of Kentucky. It will be a pleasing duty, in future pages, to note their upward career, as it so happened that they were the colleagues or adversaries of Mr. Hardin in many a civic encounter.

A profitable year was spent in the office of his cousin, Martin. April 1, 1805, he left Richmond and went to Bardstown, where he read law with Felix Grundy, who was already in the flower of his fame. The Bardstown of to-day has been shorn of the relative importance it possessed in 1805, and long afterward. It was then the fifth town in population in the State. It was the seat of justice of Nelson, a prolific mother of counties, whose broad territory had only then begun to be parceled out.

The town had been established in 1788 by the Legislature of Virginia. It was christened Bairdstown after David Baird, one of the original owners of the one hundred acres of land on which it was first built. In its decadence its name underwent diminution, the orthography being changed to Bardstown. It was early known as a mart of trade, and as a social, educational, political, and legal center. In 1808 it became the seat of a Roman Catholic diocese. It was already one of the important towns of the West in 1805 when Mr. Hardin entered it as a law student. His preceptor was the leader of the bar in all that region.

Born in Berkley county, Va., September 11, 1777, Felix Grundy was brought to Washington county in early boyhood. He had received his education at the Bardstown Academy, under the tuition of Dr. Priestly. He studied and came to the bar at his majority. In 1799 he was a delegate from Washington county to the convention that framed the second constitution of the State. He also represented Washington in the Legislature of 1800, 1801, and 1802. In 1804, 1805, and 1806 he was a member from Nelson, of which he had then become a resident. Mr. Grundy had already a large and valuable practice and a spreading fame. Mr. Hardin's early association with him was auspicious. The occult influence of such a circumstance in the make-up of character can never be measured or estimated.

At Bardstown—and, no doubt, at Richmond—Mr. Hardin enjoyed that advantage denied no law student in the West—the privileges and opportunities of a debating society. However such institutions may have succeeded in other times and countries, it is thought that in the South and West they were not only indigenous, but in some respects different and more luxuriant than those elsewhere. "Orator fit" is the annunciation of an old rule. The dwellers of the South and West were the exceptions. There oratory came by nature. Within that territory some generations ago, at least, orators were born such. Not only from the school and college, but from the shop, store, and farm-house came young men, ready, able, and willing to make a speech at any time and on any topic. It mattered not that the subject was new and that the speaker was unfamiliar with it; that he had neither read nor thought about it, nor that there was really nothing to say. Notwithstanding these and other equally discouraging conditions the orator was always ready to proceed with his remarks. In such a community oratory ranked among the absolute necessaries of life. Whether the progress that seems to be leaving the old-fashioned debating society behind is upward is, to say the least, a fit question for debate.

Can it be necessary to define these old-time institutions, or to describe their modes? They were voluntary associations, mostly comprising young men, organized for the purpose of oral discussion, directly and ultimately for mental culture and the attainment of skill in elocution and oratory. The subjects for discussion were impartially chosen from any part of the field of human thought, and were indiscriminately legal, political, literary, or scientific. A presiding officer preserved decorum, and leaders on either side of the subject of debate chose those whose aid they desired to assist in the discussion. Then the war of words (if not the contest of thought) began, and was waged with such skill, ability, and zeal, that often the balances seemed at equipoise on some very one-sided questions. There was immense virtue in these societies. They taught one to think on his legs, and to clothe and express his thoughts in good and forcible language. The voice acquired volume and modulation, and difficulties of enunciation were overcome. Debate conquered "stage fright," the dreaded malady of young orators. The biographers of Henry Clay relate an interesting incident of his first address to a debating society. The young orator arose under a paralyzing embarrassment. He addressed the president of the society as "Gentlemen of the Jury." This lapsus only multiplied the calamities of the situa-

tion. Blushing, hesitating, and stammering, he repeated: "Gentlemen of the Jury." A well-bred audience patiently stood it all, until the reason of the young orator righted itself, whereupon he made a speech of such force and eloquence as to carry conviction at once to the hearts of his hearers. To the young law student, these debates afforded an intellectual diversion to the monotony of legal study not unlike the shadow of a great rock in a weary land.

It is a proverb that the law is a jealous mistress. It inclines to clip the wings of youthful fancy. In the debating society, it was otherwise. Therein, the bounds of thought were profitably widened. Ralph Ringwood (records Irving) thus spoke of an old-time debating society in Bardstown: "Men of talents, engaged in other pursuits, joined it, and this diversified our subjects, and put me on various tracks of inquiry. Ladies, too, attended some of our discussions, and this gave them a polite tone, and had an influence on the manners of the debaters."* Through such experiences Mr. Hardin passed in his student life, and there, doubtless, he laid the foundation of the forcible oratory that distinguished his after career.

The excellence of the Bardstown bar was also an incalculable advantage to the young law student. The recurrence of the terms of court was a "feast of reason." The skill with which trials were conducted in court, the learning that characterized forensic tilts, and the eloquence that marked appeals to the jury were so many living lessons. As the medical man best learns surgery and the pathology of disease in the hospital, so, in the court-house, the law student gets his best knowledge. No incidents are preserved of this period of Mr. Hardin's life, but his solid lawyership, on coming to the bar, testified to the diligence and success of his preparation. If he had been fortunate in opportunities, he had unquestionably taken the flood at its tide. He not only entered upon his career fairly equipped in the technical learning of the law, with excellent natural qualifications, but also possessed of certain wise hints, accounted of little moment, yet, nevertheless, indispensable to be observed. These he had gathered from his preceptors chiefly. How well fitted his kinsman, Martin D. Hardin, was to start a young lawyer on the right road to honorable success, the following memorandum, furnished by him to a law student, will fitly attest:

"There are a few principles for governing a man's actions in life that are worth more than ordinary fortunes, especially to professional men. I will give a few:

* Crayon Papers, article on "Ralph Ringwood."

"First: What you have to do, do at the first time which it can be done.

"This embraces many old proverbs, 'Take time by the forelock,' etc. It requires industry. It begets leisure.

"Second: Do just one thing at a time. In other words, finish what you begin. By this rule everything will be done better and in less time.

"Third: Never use your client's money, but inform him of its receipt by the first mail, and remit by the first opportunity.

"A character for punctuality is thus acquired, a man is never ashamed or afraid to meet his client, and he is relieved from remorse which always should attend the using of another man's money and not replacing it when wanted, and I am sure that no man can habitually use his client's money and yet always have it ready when it ought to be paid, let his wealth and credit be what they may.

"I have said nothing about strict moral integrity. This is indispensable. But I trust you stand not in need of any monitions on that head. I have attempted to make the above three rules the leading ones in my business. I never have departed from either but I have felt the effects of it.

"You must not think that as you have got license you are a lawyer, and have nothing to do but get suits. Occasionally mixing in company, going to public places, and becoming acquainted with the people and with human nature are necessary. But habitual reading and attention (that is, remaining in your office) are indispensable.

"If you are closely and perseveringly industrious you will succeed. If you are not, you will fail in your hopes."

CHAPTER IV.

PROFESSIONAL BEGINNINGS.

HARDIN county was established by the State Legislature, in 1792. In 1793 Colonel Andrew Hynes founded a town on the southern slope of Muldraugh's Hill and Severns Valley creek, which he named in honor of his wife—Elizabeth. Here was located the seat of justice of the new county. The town, however, proved of slow growth. It was overshadowed by its proximity to Bardstown—unquestionably the pioneer metropolis of that region. The third census credited the town of Elizabeth with only one hundred and eighty souls, in 1810. Thither emigrated Mr. Hardin, in 1806, and opened a law office.

In this location he no doubt sought to avoid, to some extent, the odds against him in competing with the powerful leaders of the Bardstown bar. He, however, did not wholly escape that competition. Then, and for half a century afterward, the lawyers of Kentucky universally "rode the circuit." Riding the circuit needs no explanation to the members of the profession of a past generation, who still linger "on the stage," but in these changed times all readers may not fully comprehend it. The judge of a district, as he traveled from county to county, was accompanied by a retinue of attorneys, composed of members of various bars. They sat when the court sat and rose when the court rose. The usual mode of travel in that day was on horseback. Saddle-bags contained the wardrobe and such books as these itinerants carried with them.

The arrival of this cavalcade on the Sabbath preceding the opening of court produced a sensation in the county towns. The "great" men, on such occasions, unbent themselves in familiar discourse with each other, and each contributed his quota of anecdote, or incident, or learned homily, to the edification of attentive listeners of the laity. The principal hotel was headquarters, and Boniface was usually a worthy host of such distinguished company. What the hotel table lacked in delicacy and variety was supplied by hospitable attention, not to mention the hotel bar that made up in abundance and strength the shortcomings of the larder. Unfortunately, potations were not always regulated with prudence, and the consequences

were oftentimes lamentable. Excesses were committed on the circuit from which their perpetrators were happily exempt under the immediate and benign influence of the home circle.

The following incident occurring within the territory where Mr. Hardin practiced, to a couple of his colleagues, illustrates the perils of the old time circuiteer. The gentlemen referred to were attending the session of the court in the little town of L—— and were guests of the principal hotel. They had not only protracted their conviviality but on a particular evening had indulged so excessively as to require assistance in retiring. They were lodged in the same bed and their slumbers were deep and profound. Daylight streamed in at the open window next morning, when one of them awoke. In the moment of returning consciousness he glanced at the wall opposite the foot of his bed and there beheld a sight that froze his blood. He rubbed his eyes, fancying that it was an optical illusion that would fade away with a better view. But no—the more he looked the greater the horror grew. Enormous serpents of every conceivable hue, with glaring eyes and distended jaws and writhing and twisting bodies, covered the whole wall from floor to ceiling. They seemed to him to be in constant motion. "Get up here, J——!" he excitedly called to his companion. "Get up—my God! this whole room is full of snakes." The sleeping man, half aroused, muttered that he must have the jim-jams and that he had better lie down and go to sleep.

"Get up and look, get up and look, and you will see." Thus aroused, J—— gave one glance. More alarmed than his friend, he screamed: "I've got 'em, I've got 'em!"

So loud were their demonstrations of terror that the landlord hastened to their room. "I've got 'em," were the first words that he heard on opening the door.

"Got what?" inquired the astonished host. "O, sir! I've got the delirium tremens. I can just see snakes all over that wall—O! I've got 'em." Happily the afflicted men (each of whom feared the worst as to his condition) were relieved by the landlord's explanation. The walls were indeed papered with the show bill of a traveling menagerie in which the artist had somewhat flattered the boa constrictor and his friends.

The lawyers on the circuit not only tended to conviviality, but were addicted to cards. The knowledge of old sledge, twenty-deck poker, euchre, and whist proved not inconsistent with sound legal judgment and ready eloquence. Mr. Hardin was abstemious in drinking, and

played cards but little after getting into full practice. This amusement was then very common among all classes of the people of Kentucky —even the highest. Immense sums were sometimes bet, and wealthy men have been known to risk their whole fortune on the chance of the cards.

Some of our readers may, perhaps, remember the anecdote that is told of Mr. Clay (for the truth of which, however, we do not vouch). It is said that on one occasion meeting a friend at the Springs, and inquiring the cause of his unusual gloom, the latter told him that he had just lost to a noted gamester, not only his farm and negroes, but had given his notes for large sums besides, and was, in fact, a ruined man. The statesman made no reply at the time, but took the first opportunity to engage the winner, and being, as was well known, an adept in the science, soon stripped him of his ill-gotten gains; the whole of which he immediately returned to the grateful owner.

In truth, gaming at cards was the social vice of that day. John Rowan was an inveterate gamester. When Charles A. Wickliffe was in the early years of his professional career his passion for gaming caused serious concern to his friends. Judge John Pope Oldham and Governor W. P. Duvall, being among the latter, conceived a scheme to cure the young attorney of his folly. Their plan was this: It was known that at the approaching court in Bullitt county—then shortly to ensue—Mr. Wickliffe would collect several thousand dollars for Eastern merchants. As soon as he received this money Duvall and Oldham were to entice him into a game of cards, win it all, and then restore it on exacting the promise of reformation. To ensure success the friendly conspirators devised a system of signs whereby each could notify the other of the state of his own "hand" during the progress of the game. Court came on, the money was collected, and Duvall notified Wickliffe that he and the judge would call at his apartment for a game. They did so. To prevent interruption in the good work the door was secured. Thereupon they proceeded to teach Wickliffe a lesson that, sure enough, did him good. The game continued all night, and ended at last only when Duvall and Oldham had lost their last farthing of ready money. The judge, who smarted under his losses, insisted on disclosing to Wickliffe that they had no purpose of keeping his money had they won—in the hope that the latter would restore his winnings. Duvall, however, would not consent, taking ground that Wickliffe was fairly entitled to enjoy his triumph and its profits. But the joke was too good for a story-teller like Duvall to

keep, who felt entirely compensated for his losses in its relation. It ultimately reached Wickliffe's ears, and, after all, had the effect desired.*

Mr. Hardin was not personally fond of Mr. Clay, yet he had great admiration of his abilities as a lawyer, politician, and, especially, as a card-player. He said he had often played cards with Mr. Clay, but always on his side—never against him. In early life he acquired a taste for card-playing. In his first journeys around the circuit he spent more time in this sport than in professional duties. Truth to say, the competition of older and abler lawyers prevented him from getting an encouraging share of practice at the outset; while at the card-table he was quite able to hold trumps over the leaders of the bar. Chief-Justice George Robertson, in his Autobiography, confesses that he could not have survived his early years at the law if he had not added to his professional income the profits which rewarded his skill at the gaming table. Mr. Hardin realized steady gains from play, and in later life applauded himself for resigning a pursuit in which pleasure and profit were alluringly combined.

He was fond of meeting the crowds resorting to the hotel, and gathering from them items of local news. His faculty for wit and humor made him attractive, and he had an abundant and attentive auditory when in a colloquial mood. So it was when a session of court was held at Elizabethtown, he had to encounter competitors from abroad, and he, in turn, following the custom of the time, joined the practitioners on the circuit.

One of the most important incidents of his early career was his marriage, March 31, 1807, to Elizabeth Pendleton Barbour, daughter of Colonel Ambrose Barbour, of Washington county. Colonel Barbour was a wealthy farmer who had emigrated from Virginia some years before, and was connected by blood with the distinguished family of that State bearing his name. He was brother of Thomas Barbour, whose distinguished sons, Phillip P. and James, attained the highest civic honors. Phillip P. Barbour was Speaker of the Lower House of Congress and Associate Justice of the Supreme Court, while James was Governor of Virginia, United States Senator, and Minister to the Court of St. James. The belle of all the country around was the beautiful daughter of Colonel Barbour, known to her intimate friends and admirers as "Betsy Barbour," the abbreviation common to the name Elizabeth in those days. Among the crowd of suitors who laid their hearts at her feet was young Ben Hardin, who, so she

* Related to author by Hon. J. C. Wickliffe.

once said, compared very advantageously with the rest. His ready wit rendered him entertaining, and, with his fair complexion, bright blue eyes, and hair of reddish tint, dressed handsomely, with lace ruffles on his shirt bosom, and at his wrist, falling over small, white hands, he was no uncommon suitor.

Said his wife in after years: "He was very fastidious in his dress in those days, and continued so until some time after our marriage, when one day as he sat busily writing, the ruffle at his wrist dabbled in the ink and on his paper, so much to his annoyance that he impatiently tore it off. He would never in future wear ruffles, and gradually fell into indifference in regard to his dress." *

When he commenced the study of law at twenty, Betsy Barbour had plighted her faith to him, and in March, 1807, they were married. Mr. Hardin took his bride to his new home and set up housekeeping in the primitive way of the period. Whatever talents the young lawyer may possess, the beginning of his career is a strong trial to his patience and equanimity. The patronage of the public is capricious and somewhat like the wind "that bloweth where it listeth." That irresponsible entity is extremely fond of depreciating the talents of young men generally, but of the bar particularly. The veriest ignoramus would cheapen the abilities of Pitt were he suing for its favor. With some there is a tinge of criminality in being a young man.

One day, in the year 1808, while Mr. Hardin was engaged in his office, the officers of the law were passing by, having in custody one Bray charged with having committed a murder in the "Level Woods" —a part of Hardin county, subsequently added to Larue. It is related that the homicide was committed in the following peculiar way: A party of young men were engaged in an all night debauch. One of the number had drunk spirits so excessively as to become insensibly drunk. An overburdened stomach finally yielded its contents. While this was going on, Bray, having some curiosity on the subject, took a candle to demonstrate by ignition whether the drunken man was discharging pure spirits. The outflowing stream caught fire and so burned the unfortunate inebriate that he died. For this the prisoner was arrested on the charge of murder. He asked of the officers having him in charge permission to consult Mr. Hardin.

During the consultation he inquired what fee would be charged, and the reply was three hundred dollars. The prisoner complained of this as excessive, saying that he could get a Bardstown lawyer for that sum. That remark had a decisive effect on Mr. Hardin's future career.

* Miss Lucinda B. Helm, in Lebanon *Times*.

He immediately went home and notified his wife to prepare to move to Bardstown. Within a week he was domiciled in the latter place. He had been retained in Bray's case, and the latter, after all, had the services of a Bardstown lawyer.* As Mr. Hardin came to Bardstown his old preceptor, Felix Grundy, was leaving for a fresh field of fame —the rising young State of Tennessee. But Rowan, Duvall, Charles Wickliffe, and others remained to contest the triumphs of the bar. Dr. Henry Chapeze, father of the subsequently-distinguished lawyer, Ben Chapeze, told Hardin that he would find success at Bardstown difficult on account of the legal talent already there. "But," said the doctor, "I have seen a little bull crowded from a haystack by larger cattle, who kept trying to get in so persistently that finally the older and stronger yielded him a place. So you will find it." The talented and popular William P. Duvall was county attorney in Nelson at that time—a post filled annually by the justices—and to which Duvall had been frequently re-elected. A short time before this office was to be filled Mr. Hardin visited the various justices and obtained the promise of each to vote for him. This they did somewhat unexpectedly to Duvall.

In his first important case at Bardstown, one May was his client, and a large body of land was involved. He was alone on his side of the case, while the opposite side had retained several of the most distinguished attorneys at the bar. Hardin was diligent and laborious in preparation, and when the trial came on, he threw his whole soul into the contest. He scarcely ate or slept. He ransacked authorities, reviewed the evidence and record, and, in the adjournments of court, when not at work otherwise at the case, walked to and fro in wrapt revery, mentally reviewing, planning his argument, and conning over every detail of law and fact. To his wife's importunities to eat, sleep, and rest, he answered that if he won his case his fame was made, and he had resolved to win. Finally, the case was argued thoroughly and ably, but none surpassed Hardin. The verdict came, and his client was victor. It was a proud moment—the proudest of his life. It was pardonable for him to hasten from the court-room to bear the glad tidings to his anxious and expectant young wife, that she might share with him the luxury of success. He had, however, been anticipated. Father Baden, the warm-hearted French priest, and Barry, his old Irish preceptor, had witnessed the trial, and on its conclusion had hastened to Hardin's house, feeling that his wife alone could sympathize with their excess of joy.

* Letter of Mrs. Kate Riley.

When the stalwart young lawyer came, the enthusiastic little French priest embraced and kissed him (despite his protest), and the Irish teacher was scarcely less demonstrative. It ought not to be recorded how freely the wine flowed, or how the Irishman boasted that he was no less than the author and finisher of young Hardin, or how the French father had all the time predicted his certain, early, and magnificent success. Pleasurable as was this early triumph, the better part of it was the substantial results that followed. His fame went abroad, and an abundant practice came in. Neither dazzled nor puffed up by success, he remembered that it first came by diligence and study, and reasoned rightly that diligence and study would retain it.

March 19, 1810, he was appointed, by Judge Stephen Ormsby, Commonwealth's attorney for the district in place of Gabriel I. Johnson, Esq. This office he held for several years. How far the efficient discharge of its duties may have developed certain traits of character in Mr. Hardin is an interesting question. Whether a certain austerity of manner, and a certain real or apparent uncharitableness in dealing with an adversary may not have been developed in the exercise of the prosecutor's duties can neither be confidently affirmed nor denied. The affirmative theory is not improbable. The position of prosecutor was certainly not without its advantages. It gave a man of bright parts a chance to show his ability. It threw him in competition with the best talent at the bar. Mr. Hardin was one to profit by this opportunity. He laid the foundation of that fame as a prosecutor that made him the terror of the criminal class of his day. Not only did he profit in the way of reputation, but his receipts from official fees amounted to fifteen hundred or two thousand dollars per annum.

CHAPTER V.

OUTSET IN POLITICAL LIFE.

IN his twenty-seventh year, Mr. Hardin took his first step in political life. At the August election, 1810, he was chosen representative in the State Legislature, from Nelson county. Then, as later, a seat in the Legislature was deemed the proper beginning of an ambitious career—the stepping-stone to something better. It afforded especial advantages to a good debater. It also brought one in familiar contact with the best talent and highest social life of the State. It enabled a man of parts to form associations and friendships helpful to higher aspirations. It was an arena in which Mr. Hardin immediately became conspicuous.

"During the first ten years of the present century," says a writer in *Harper's Magazine*, "the society of the little capital of Kentucky was very brilliant and amusing. The Federal Capital had not yet come to be regarded as the only field for the display of great genius, and the State courts and the Legislature frequently enlisted as much talent as was drawn to the support of the National administration. During the fall and winter months all the great men of our State were assembled in Frankfort, to attend the sittings of the House of Representatives or the Federal Court and Court of Appeals. Most of these, as we have said, were quite young—in the very heyday of health and spirits—none of them being over thirty-five years of age. It is not to be wondered at, therefore, if they sometimes indulged in excesses which older men would have shunned. Here, it may be, we are violating the principal canon of modern biography, that bids us 'praise without ceasing, and always represent your hero without a blemish,' but these youthful statesmen were men, subject to like passions as we; and why should we expect of them a higher standard of morals than obtains at the present time? Public opinion, besides, was far less exacting on many points then than it is now; and gaming and drinking, in particular, were hardly regarded as vices, and were practiced openly by almost every one. Certain it is, their assemblies were often noisily, and even riotously, mirthful, and were sometimes the scenes of frolics which very proper persons might regard as scandalous. What would such a person think were he told that Mr. Clay was himself a rather wildish fellow in those days, and engaged in such freaks as the following:

"'One night, after the bottle had circulated until a late hour, the great Compromiser announced his intention of finishing off the entertainment by

a grand Terpsichorean performance on the table, which he accordingly did, executing a *pas seul* from head to foot of the dining-table, sixty feet in length, amidst the loud applause of his companions, and to a crashing accompaniment of shivered glass and china; for which expensive music he next morning paid, without demur, a bill of $120!'"

The Legislature at that period convened in October. October 1, 1849, Mr. Hardin remarked to a friend on the streets of Frankfort, pointing to the capitol, "thirty-nine years ago this day I first entered that building." He had forgotten at the moment that the capitol he entered in 1810 had been destroyed by fire in 1813. In 1810 General Charles Scott, a companion of Washington and hero of the Revolution, was governor, and Gabriel Slaughter lieutenant-governor. John Simpson, of Shelby county, was chosen speaker of the House. Noteworthy among Mr. Hardin's colleagues was his kinsman, General William Hardin, representing Breckinridge county. Robert Johnson, author of the law afterward famous as the "Bob Johnson law," and father of the subsequently-distinguished Colonel "Dick" Johnson, was a member from Scott. At this session, also, Solomon P. Sharp, as a member from Warren, began the brilliant career destined to terminate so soon and so tragically. With the latter Mr. Hardin contracted a friendship undisturbed by subsequent political differences, and ended only by death. Nothing is known of Mr. Hardin's participation in the proceedings of the session—save as the journals show—and this would not lend interest to this narrative. The succeeding year he was again elected representative—elections occurring annually. At the opening of the session Simpson was again elected speaker. Johnson and Sharp were also members. Tunstal Quarles represented Pulaski county. Quarles was subsequently a member of Congress, and took a conspicuous part in the public affairs of that day. Hardin's friend, William Owsley, whom he had first met while he was studying law at Richmond, was, this session, the member for Garrard county. Their early friendship was now renewed "on the floor of the House."

At this session Mr. Hardin introduced and secured the passage of a bill, the object and effect of which was to discourage dueling. It provided that attorneys and officers should take an oath that they had not fought a duel, or sent a challenge to fight, and would not do so during their continuance in office. This event was important because it marked the inauguration of a course of legislation that has contributed to rid the country of a great evil.

Dueling had become a great scourge in Kentucky at that day. It was almost unknown in earlier times when the Indian maintained a predatory warfare on the "settlements." But the red man having succumbed to the inevitable, the spirit of war in his white enemy sought new arenas for its display. In default of laurels on the tented field, and in the absence of a public enemy, he betook himself to the "field of honor," to encounter a personal foe, according to the regulations of its "code." Every community in the State had its so-called affair of honor. Frequently the *amende honorable*—an amicable adjustment, or the pusillanimity of one or both the combatants arrested its progress. Often, however, it was consummated by a hostile meeting. A few bad shots, even then, sometimes produced sudden reflection. The opportune intervention of friends not rarely proved effectual. A slight flesh wound of either combatant hastened the success of peaceful negotiations. When, however, the dead-shot—a numerous sort of person in such affairs—encountered an inexpert adversary —the kind he usually sought—the gentlemanly dead-shot avoided all danger by killing his man at the word. It was highly honorable, the reader will understand, highly honorable—or at least so considered in that perverted period. It must not be supposed, however, that the whole State or all its society was infected with this folly. Pugnacity, it is true, was the rule. The man of able body—who would fight in no fashion—was rare, and lacked public respect. Church relationship subdued, but did not extinguish, the combative passions. Premeditated personal altercations were indulged by the ruder classes. Men of the first respectability resented insults when given by a blow, and following it up, then and there avenged themselves. The late centenarian, Dr. C. C. Graham, grieved to say that, on one occasion, his friend, Henry Clay, indulged in a fist-fight in the streets of Lexington, the provocation, however, being sudden and great.

Rencounters with arms were not unfrequent, and their results often lamentable. To be distinguished from those who fought in these extemporaneous modes, was a class composed chiefly of professional men, politicians, men of fortune and social pretensions, who assumed to be the gentry of the land. This class laid claims to the highest sensibilities of honor. They were easily affronted by one of their own kidney. When affronted there were but two modes of redress—an apology or "the satisfaction due from one gentleman to another." If both these were denied, the injured party had left a full and efficient remedy which was to brand his adversary as a "poltroon, and a coward

unworthy of admission to the pale of gentlemen." Thereafter the "escutcheon" of the injured party was restored to its normal condition, and was not a whit less effulgent than the barber's brazen basin which served Don Quixote for a helmet. The perversion of the term "gentleman" in these affairs was strangely absurd. One could not insult a "gentleman," if the latter decided the aggressor not a "gentleman." "Gentlemen" were only insulted by "gentlemen." The offerer of insults or the doer of injuries by no means diminished his gentility, however causeless, brutal, and ungentlemanly his conduct. When the aggrieved party sent a challenge, the challenged party had the right to dictate the terms of the fight. This he did in such a way (as far as he could) as to afford himself every advantage over his adversary. Before the meeting each assiduously drilled himself in dueling tactics and use of weapons. At the meeting each confidently hoped to make a fatal shot. Sometimes (but all too rarely) both the murderers were killed.

Thus in this jargon of crime, "one gentleman rendered satisfaction to another." The views actuating Mr. Hardin are aptly expressed in the preamble of the law referred to: "Whereas, the Commonwealth has repeatedly sustained great and irreparable injury in the loss of some of her best and most valuable citizens; inroads have been made in private families—their peace, happiness, and domestic felicity destroyed by the present inhuman practice of dueling; a practice contrary to the precepts of morality, religion, and civil obligation, which originated in a barbarous age, fostered by savage policy and only perpetuated in this enlightened era by mistaken ideas of honor." He thus pronounced a judgment on the so-called "code of honor," from which few dissent now. At that period, however, it placed him in antagonism with a class—socially and numerically respectable. His views remained unchanged throughout life. During the constitutional convention of 1849 he successfully advocated the incorporation of a similar provision in the present Constitution.

The following extract from a speech made by him at the time will fitly conclude this subject.

"The act of the Assembly of 1811 on dueling was drawn up by myself, and carried through the House of Representatives by the aid of a gentleman one year younger than myself, Mr. Solomon Sharpe, one of the ablest and most eloquent men ever born and raised in Kentucky. And with the exception of a single verbal error in the printing—'have' for 'has'—it now reads precisely as it was drawn. I thought then, and I still think, it to be

a most excellent law. We had, sir, ever since Great Britain and France advanced a step beyond barbarism, and in this country ever since its foundation, the severest possible laws against dueling.

"In the course of my reading as to the history of mankind, I have turned my attention some little to this subject, and, sir, from the days of Nimrod, the mighty hunter of Babylon, down to about three hundred years ago, I have not found a single instance where a private personal quarrel was settled by a duel. In every case where there were personal combats they were for public and not private considerations. The private combats before the walls of Troy and the walls of Jerusalem were fought by men in each of the armies opposed to each other, and in behalf of each army.

"Such was the character ot the case referred to by the gentleman (Mr. Nuttall) between the three brothers of the Horatii and the Curiatii. There the fate of the battle, it was agreed, should turn upon their success. There is no instance of the modern duel presented until we come down to the time, when Francis I., of France, gave the challenge to Charles V., King of Spain and Emperor of Germany. There the practice took its origin, and it has been in existence ever since. And why is it? Because there is a notion, a ridiculous kind of opinion going abroad, invisible, intangible, and which no man can touch, called the 'code of honor,' which compels a man to fight in certain cases. Thus: Do you want to kill me? No. Do I want to kill you? No. But there is some imaginary insult—some supposed injury—and some sickly sensibility feels itself insulted, and asks for an explanation. The man who is asked is a little too proud to give it, and the parties correspond awhile, finally fight—and all about nothing. In a case where a real insult is offered, and a man gives another the lie, it ends generally in a fist fight, and there is the end of it. If it is an outrageous insult, such as seducing a man's wife, or his daughter, the offender is generally shot down at once, and he is served pretty near right in having the thing administered to him in that way. It is only for small, imaginary, and idle insults that men fight duels.

"But, says one gentleman, we must have a provision against the carrying of concealed weapons if we desire to guard against this terrible shedding of human blood. I should have no objection to that if it were possible to carry it fairly out, but we all know how indefinite such a provision would be. Here is a miserable old penknife that I carry, and it is a weapon.

"Mr. A. K. Marshall: 'Deadly weapons are referred to.'

"Mr. Hardin: 'It would be a deadly weapon if used as Jesse Swearingen did once an old penknife upon Mr. Gentry. He struck him with it in the breast, and it just touched his heart, and killed him instantly. But there is no need to make the carrying of concealed weapons a test of office, because the very conviction of a man for such an offense would be punishment enough to deter him. But if you arraign the duelist for his offense,

where will you try him? We all know what public sentiment is on such a subject. Have you ever heard of a man in Kentucky being convicted of killing another in a duel? No, sir, and why? Because public sentiment—though in the teeth of the law—will not convict a man for that crime. The statute of 1811, for eight or ten years after its passage, did a great deal of good, but after the Legislature got into the practice of relieving them from the effect of its operation, and during the last five and twenty years, I think I hazard nothing in asserting that every year has witnessed the addition to the statute book of a relief law of this kind. And instead of requiring the oath to go back to the passage of the law, the oath only goes back to a certain day in the last session of the Legislature.

"What I desire is, that there shall be created a sufficient apology to public opinion for the man who will neither give nor accept a challenge. No man wants to hazard his life or jeopardize that of another, or to give a challenge, or to accept one—but he makes the sacrifice in obedience to a false notion of honor. All I desire is, then, to furnish an apology to public opinion for a man's refusing to be bound by this false notion of honor. But, says the gentleman, if you do not allow challenging, you will have street murders. Do we not hear of these being committed now all over the country? And who are the perpetrators of them? Why, by the young Hotspurs of the land. This provision is not now in the Constitution, and why do they not resort to the duel in such cases? Just because it suits them better to kill without a duel than with it. They become excited, and under the hope and confident belief of being cleared from the consequences through the influence of their own family and powerful friends, they are tempted to commit the crime. I could name to you, as having occurred within the last ten years, some of the most flagrant and atrocious murders where the parties could have fought it out in a duel. But there is a desire in the country, on the part of a great many men, to indulge their violent and angry passions because it gives them a reputation of being brave men.

"Sir, there are a great many men who are skilled in the use of weapons, and are ready to show their bravery by fighting and killing you, that would not storm a battery as quick as you, if they were at the head of an army. They practice themselves in the use of weapons—some with small swords and others with pistols—until they become exceedingly expert, and they are able to come on the ground with a confidence in their superior skill that unnerves their antagonist and gives them additional nerve. Nor are these combats on equal footing in other respects. Here is a young gentleman with no wife and family, to whose reckless feelings life is nothing, and he is ready enough to fight. Another young man of five and twenty has a wife and family of four or five little children so near an age that you can hardly tell which is the oldest, and all dependent upon his daily exertions for their bread. The risk, therefore, is all on his side.

"One of Alexander the Great's successors, called Antigonous, noticed among his soldiers one who was conspicuous in the army for his daring courage and disregard of danger. Sending for him, he observed that the soldier looked pale and sickly, and he asked him what was the matter with him. Said he: 'Sire, I have, long since, lost my health.' The king ordered his physician to attend him, and save his life, if possible. He complied with the injunction, and restored his patient to robust and vigorous health. The king, observing that he no longer exhibited that courage and daring which previously characterized him, sent for the soldier the second time, and asked him what had caused this change in his conduct. 'Sire,' replied he, 'your physician has made me a coward. When I was sick, my life was a burthen to me, and I did not care how soon I lost it, but, in giving me health, he has given to me the enjoyment of life, and I fear to lose it.' This thing depends greatly on the temperament of a man. Some are reckless and willing, at any moment, to risk their lives. Others who did not hesitate an instant to hazard their lives against an enemy of their country, and shed the last drop of their blood in its defense, would, in no case, engage in a private encounter.

"We know that dueling does not stop killing in the streets, or assassination on the highways. No, sir, this is a mistake, and nothing will stop it but a sense of certain, positive, and speedy punishment. And how are we to stop the practice of dueling? We are to furnish men who are in doubt as to a point of honor with a competent apology for avoiding a duel. That is all we want. There is not a man in the world, enjoying health, and who has friends and connections around him, that does not love life. Look at the man in the last agonies of death, and see how he clings to life. And why? Because he loves life. And yet, a false notion of honor, or, rather, a false public opinion, will force the man in fine health to hazard his life to a false notion of honor. Frederick the Great, of Prussia, was one of the ablest and bravest men who ever fought at the head of an army, and yet, what did he say to the duelist? Why, that, if a duel was fought, he would hang all concerned in it, and, if he could find out where was the place of meeting, he would go there himself, with his hangman, and hang up the survivor without a trial. Has not Great Britain lately hung several men who killed others in duels? A Colonel Campbell there killed a man in a duel, not long since, and was hung. And other instances might be mentioned.

"And Kentucky is the only country where no man has ever been punished for giving, accepting, carrying a challenge, or killing his antagonist in a duel. What inroads have been made in the family of Alex Pope, my old friend, with whom I practiced law until he died, by the dueling propensities of those two young men, Henry and Fountain Pope. One was killed in Arkansas, and the other near Louisville, without any cause, if the parties

had understood each other. The parties fought, at the distance of twenty yards, with shot-guns.

"Did I not know, while in Washington, Barron and Decatur, two of the first men at that period in America, come up in mortal array within sixteen feet of each other, because one was near-sighted, and the rule was that both should take deliberate sight before the word to fire was given. They both fired and fell with their heads not ten feet apart. And before they were taken from the ground, each expecting both to die, they spoke to each other, and a reconciliation took place. They blessed each other and declared that there was nothing between them. All that was required to prevent the meeting was an explanation between them. There was the case also of McCarty and Mason, own cousins, who fought one of the most murderous duels on record, because McCarty voting for another man, Mason being a candidate felt aggrieved, and challenged his vote on the ground of not being twenty-one. McCarty first proposed they should sit over a keg of powder and set fire to it, but Mason declined. Next he proposed they should go to the top of the capitol and, hand in hand, jump from the parapet wall to the ground, a distance of ninety feet. This Mason also declined. Then McCarty proposed they should fight with muskets with three balls apiece, which Mason accepted, and then they went out and fought eight feet apart—about nothing. McCarty has told me that the duel was forced on him by one of Mason's seconds.

"Such are the bloody scenes which illustrate this 'code of honor,' as it is styled. In the poems of an old English satirist, Churchill, is a satire against dueling, which, I remember, made a strong impression on me when I first read it, many years ago. In speaking of the duelist's honor he says:

> "'His honor is like a maiden-head,
> Which, if in private brought to bed,
> Flaunts and flutters about the town,
> And is never missed until the loss is known.'

"Such is just about the character of the insults for which men fight duels. A real insult is resented at the moment, and an uncertain or imaginary one leads to the duel. In the last case the parties correspond and consult their friends and seconds, who generally are young Hotspurs, who take a great deal more delight in acting as second than principal. A great many of these seconds, no doubt, feel very much like the lawyers in a case in court; they would a great deal rather see their clients pull the hair the wrong way than get at it themselves. And, in ninety-nine cases out of one hundred, an amicable arrangement of the difficulties between the parties is prevented by the seconds.

"In the recent case of young Pope, I have no doubt that had my young friend over the way (Mr. Preston) been one of the seconds, he could have stopped it. The gentlemen who did act as seconds were equally respectable

and worthy, but perhaps they were not so prudent and discreet in going back to the origin of the quarrel and having it arranged, as they might have done. The evil is that in these controversies, in ninety cases out of a hundred, the parties get into the hands of men who believe they will be brought into consequence by becoming seconds in a duel.

"I hope the convention will not adopt the amendment offered by the gentleman from Louisville (Mr. Preston) to leave this matter to the control of the Legislature. Can there be any law proposed which does not now exist? No. Is it not death, if a man is killed, to all the persons concerned? It is; and if it is, it is the strongest kind of disqualification to hold any office in the future, I warrant. But is there not a law now in existence disfranchising from office any one who gives or accepts a challenge? There is; and what good can be attained by the passage of any further laws on the subject? If left to the Legislature, they will continue to pass special laws relieving men from the penalty, and thus nullifying the statutes.

"What more, then, can you do? You can furnish to the man who desires not to fight, an apology to public opinion for refusing to give or accept a challenge. Let the Constitution contain this disqualification, and you will attain this object by putting it out of the power of the Legislature to absolve a man from the penalty. These were the sentiments I uttered thirty-eight years ago in the legislative halls of Kentucky, and I was supported in them at that time by a young man one year younger than myself, and one of the most eloquent and able men Kentucky ever knew—I mean Solomon P. Sharpe." *

* Debates (Ky.) Conv., 824.

CHAPTER VI.

THE KITCHEN KNIFE.

THE leaders of the Federalist party opposed the war of 1812. For this reason, chiefly, that party was charged with "being the friend of Englishmen" during the struggle that ensued. On the successful issue of the American arms the Federalists, as an organized party, ceased to be factors in political affairs. With the peace that ensued began that tranquil period in American history—that "era of good will"—that had its culmination under President Monroe's administration. The National Republican party, of which Jefferson was the recognized founder, was, at that period, alike the party of the government and the people. Within its ranks were questions that caused differences, but they partook more of policy than principle, more of men than of measures. For example, there was some attempt to arouse the jealousy of other States because Virginia had continuously enjoyed the Presidency, save the single term of John Adams. The question of establishing a national bank was agitated. Differences also existed on other questions. But all this was within the Republican fold. Generally, the Federalists themselves had as resolutely turned their backs, not only on their organization, but on its very name, as earnestly as within a half century later "Know-Nothings" deserted a shipwrecked party.

Madison's administration had been eminently successful. The difficulties that beset the opening of his second term were clearing away early in 1815. The triumph of General Jackson over the British forces at New Orleans in January of that year flattered American pride in a degree that later generations can not conceive. The treaty of Ghent of December 14, 1814 (not known in this country till after the battle), filled the cup of public complacency to its brim. In such a "piping" time as this Mr. Hardin became a candidate for member of the Federal Congress in the Bardstown district. Having served two terms in the State Legislature with credit, and having, in his nine years of professional life, worked his way to the first rank at the bar, it was not out of the order of things for him thus to aspire. This period antedated the origin and domination of the caucus and political conven-

tion of later times. An aspirant for office was not able to make progress by pleading his service to the party in the past or his ability to successfully carry its banner in the future. His services to his country were taken into account, his patriotism, his zeal for the public welfare, and his ability to assist in needed legislation, but the tribunal that measured and determined his merit was not a dominant party, but the people at large. For his competitor he had the venerable General Matthew Walton, of Washington county—a most worthy man.

General Walton had been an active participant in the public affairs of Kentucky from the earliest times. A Virginian by birth, he had been a soldier of the Revolution. He was a man of courage, and had especially won popular favor by his gallantry at the battle of King's mountain. He had removed to Kentucky soon after the capitulation at Yorktown. He was a member of the second Danville convention, in May, 1785, held with a view to a separation of Kentucky from Virginia. Two similar conventions were held—one in the August following and the other in 1787—and General Walton was a member of each. In the latter he represented Nelson county. He was also the representative of that county in the Virginia convention which ratified the Constitution of the United States. He was a delegate from the same county in the Danville convention of 1792, that framed the first constitution. He was also a delegate in the Virginia House of Burgesses for 1789 and 1790. He served in the Kentucky House of Representatives in 1792 as a member from Nelson, and in 1795 and 1808, from Washington county. In 1800 to 1803 he was member of the State Senate. From 1803 to 1807 he had represented his district in the lower house of Congress. In 1809 he was chosen presidential elector for James Madison. He is said to have been proprietor, at one time, of one hundred and sixty thousand acres of land in Nelson and Washington counties, and from Salt to Green river many are the titles traced through Matthew Walton. The dwelling house he built for himself was the first of any pretensions to elegance erected on the soil of Kentucky. In addition to his fame as a soldier, and his long and varied political career, he was noted for high breeding, gentle manly deportment, and liberality. It may be set down that Mr. Hardin had a formidable competitor. None of the issues and incidents that marked the canvass have survived. It was a warm struggle, as Hardin himself long afterward remarked. His majority of three hundred closed General Walton's public career. He died on the 18th of January, 1819.

The first session of the Fourteenth Congress began December 4, 1815. Henry Clay had been speaker of the Twelfth and the first session of the Thirteenth Congress, and was again chosen. The Kentucky delegation in the House consisted of Henry Clay, Joseph Desha, James Clark, Ben Hardin, R. M. Johnson, Alney McLean, Stephen Ormsby, Solomon P. Sharpe, Samuel McKee, and Micah Taul. Some of these names are wholly unfamiliar to modern ears and some but faintly remembered. Mr. Clay's career and that of Mr. Hardin, to a great extent, ran in similar lines and often together and finally ended the same year. Colonel "Dick" Johnson still freshly wore the laurels won at the Thames. In that battle between the American forces on one side and the British, under General Proctor, and the Indians, led by Tecumseh, on the other, it is said that during a charge by Colonel Johnson on the Indians that he slew their leader with his own hand. Some unknown bard thus announced the event:

"Rumsey, dumpsey,
Colonel Johnson killed Tecumseh."

His congressional service had begun in 1807 and had been continuous. Solomon P. Sharp, a former colleague and friend of Mr. Hardin in the State Legislature, will be spoken of elsewhere in describing a tragedy that thrilled the State a decade later. Micah Taul was a lawyer of good reputation, who practiced in Pulaski county as early as 1800, and afterward in the Court of Appeals. His sole public service seems to have been performed as a member of the Fourteenth Congress. James Clark was born near the Peaks of Otter, in Virginia, in 1799. At an early day his father emigrated to Kentucky and settled near Kentucky river in Clark county. His principal education was received from Dr. Blythe, afterward a professor in Transylvania University. He studied law with his brother, Christian Clark, a distinguished lawyer of Virginia. Returning to Kentucky, he began practice at Winchester in 1797. He was a member of the Legislature in 1807 and 1808, where he occupied an influential position. He was appointed Judge of the Court of Appeals in 1810, but after two years' service resigned. He was elected to the Thirteenth and Fourteenth Congresses. During his latter term he resigned, to accept the position of circuit judge. A decision rendered by him started the contest over the relief laws—famous in Kentucky history as the "old and new court" struggle. In 1836 he was elected governor and died in office. He had a strong mind and fine wit, and his literary attainments were respectable for his day. He had a fine person,

lively disposition, easy address, and was an admirable story-teller. To these lighter graces he added all the stern and manly virtues that inspire confidence and command respect.

Stephen Ormsby, for many years, beginning in 1780, was clerk of the courts in Jefferson county. He was appointed district judge on the organization of the State. He held this post until district courts were superseded by circuit courts, when he was appointed a judge of the latter. In 1787, he was a member of the Kentucky Society for Promoting Useful Knowledge, in which he was associated with many of the first citizens of the State. He was chosen presidential elector, in 1796, and voted for Jefferson, when John Adams was elected. He was a member of Congress from 1811 to 1817. Collins says: "He was highly esteemed as a man and as a public servant."

Alney McLean was a native of Burke county, North Carolina. He emigrated thence to Kentucky, and began the practice of law at Greenville about 1805. He was a captain in the war of 1812, and took part in the battle of New Orleans. After the battle, he was assigned to very arduous fatigue duty, of which he complained to General Jackson. He received an insulting rebuff, for which he never forgave his old commander. He represented Muhlenberg county in the Legislature in 1812 and 1813. His congressional career and personal association with Mr. Hardin began with the Fourteenth Congress.

Joseph Desha, like Hardin, was of Huguenot descent, and, like him, was a native of Pennsylvania, where he was born December 9, 1768. The similarity continues, in that they were both brought to Kentucky in early youth. His military experience began when he was fifteen years old, with Indian fighting. In 1794, he volunteered under General Wayne, and served with distinction in his campaigns against the Indians. For nine years previous to 1806 he represented Mason county in the State Legislature by successive elections. He served in Congress from 1815 to 1819. He was a warm advocate of the war of 1812, was a major-general of volunteers, and present at the battle of the Thames. He was an amiable man, a gallant soldier, and greatly esteemed for his many virtues.

In 1808 Samuel McKee was a practicing lawyer at Lancaster. He was legal preceptor and brother-in-law of the late Chief-Justice George Robertson. He was elected to Congress four successive terms from the Lancaster district—1809 to 1817. At this session Kentucky was represented in the Senate by Major William T. Barry and Isham Talbot. Talbot was born in Bedford county, Virginia, in 1773. In his youth

his father emigrated to Mercer county, Kentucky. Scholastic advantages were limited at that day. Young Talbot, however, attended the best schools in Harrodsburg. Without the aid of teachers he acquired an extensive knowledge of the languages, ancient and modern. Studying law with Colonel George Nicholas, he commenced practice at Versailles. Soon afterward he removed to Frankfort and attained the first rank in the profession. He was elected to the State Senate in 1812, and to the United States Senate in 1815 as successor of Jesse Bledsoe. His term expiring, he was re-elected and continued in office until March 4, 1825. He died at Melrose, his residence, near Frankfort, September 21, 1837. He was an accomplished lawyer and eloquent orator. His rapidity of utterance was extraordinary. He once argued a case before the Supreme Court four hours. His speech was marked by impassioned eloquence, but his words flowed like a torrent. After adjournment of court Senator Talbot's velocity of speech became the topic of conversation with the judges. Judge Washington wittily observed that "a person of moderate wishes could hardly desire to live longer than the time it would take to repeat deliberately that four-hour speech of Mr. Talbot." Mr. Hardin's kinsman, Martin D. Hardin, succeeded Major Barry in the Senate in 1816. Of his further career it may be of interest to say that he became secretary of State in 1820 under Governor John Adair. He published a volume of decisions of the Appellate Court in 1808 that bears his name. He took honorable part in the war of 1812. He ranked high at the bar and enjoyed a large practice. He had inherited the sterling integrity of his father to which he had added the graces of a liberal scholarship. He died in 1823, widely regretted.

The standing committees of the House were appointed December 6th. Mr. Hardin did not take his seat until the 12th, so that in their arrangement he was omitted. He was afterward appointed on two select committees: "On soldiers, widows, and orphans," and "on changing the Western line of Indiana territory." During the session Mr. Forsyth, from the Committee on Foreign Relations, reported a bill to carry into effect the stipulations of the treaty of commerce lately concluded with Great Britain. It was opposed on the ground that it was but an echo of the treaty itself, that the treaty was the law of the land without the approval of Congress, and that Congress transgressed its powers in undertaking to give it force or restrain its operation. The debate to which it gave rise was protracted and vigorous. Among those who spoke for the bill were

Forsyth, of Georgia; Clay, of Kentucky; P. P. Barbour, of Virginia; John W. Taylor, of New York; and Randolph, of Roanoke. In the opposition, among others, were Gaston, of North Carolina; Tucker, of Virginia; Pinkney, of Maryland; Pickering, of Massachusetts; Calhoun, of South Carolina; and Mr. Hardin. Mr. Hardin made his debut on this question, and the following is taken from the report of the debates:

"Mr. Hardin appealed to the plain common sense and intelligence of the House, whether the bill upon which they were lavishing so much of their time and exertions was not entirely superfluous and nugatory. Here was a treaty, a contract, fairly and with full deliberation, concluded between the lawful sovereignties of this country and Great Britain, ratified as the constitutional law of the country directed, by the President, with the advice of two-thirds of the Senate, and by the President proclaimed to the people as the law of the land, with an injunction for the due observance of it—containing nothing that interfered with the municipal laws of the country—no regulation that might not be carried into immediate effect without legislative interference—involving no call whatsoever for money, and yet tenaciously held up as an object of legislation, and made the subject of a bill which did little more than re-echo it.

"He was as much aware as the gentleman who supported the measure that the treaty-making power could not, by a treaty, lawfully make war or impose taxes or encroach upon those powers the Constitution had deposited in Congress; but it was no less true that the Constitution declares in unequivocal terms that the President may make treaties, and that no restriction or limitation whatsoever, to his power in that respect, is specified in that instrument, which is sufficiently declaratory of the extent of the power, inasmuch as it says that treaties made in the form and with the authorities already mentioned shall be the law of the land.

"Some of those honorable gentlemen, by way of smoothing the passage of the bill through the House, had argued that it was so far at least unobjectionable, that it could do no hurt; that if it did no good it could do no harm; but Mr. Hardin reminded the House of the eminence on which it stood, that it was composed of the assembled representatives of the nation, sent there to deliberate and to resolve upon its most important concerns, and he therefore deprecated, as it would be a dereliction of the high character of such an august assembly, their gravely deliberating upon nothing.

"He respected the dignity of the body too much to give his assent to their entertaining a measure for no better reason than because it was harmless. Besides, that act which now appeared so harmless, might ultimately turn out to be very mischievous as a precedent; and this violation of the Constitution in a thing, no matter how trifling, might hereafter be made the

ground of more daring encroachment. On this point he warned the House to be cautious, to guard, not only the main body, but the outposts; and to reflect in due time that some twenty or thirty years to come this precedent might be brought forward to the incalculable injury, perhaps to the ruin, of the Constitution.

"Gentlemen had said that, on a commercial subject, no treaty could be obligatory, because the Constitution had assigned to Congress the regulation of commerce. Where, then, said he, will gentlemen stop? To Congress, say they, is delegated the exclusive jurisdiction over everything. According to their construction, therefore, the treaty-making power was impotent, a nullity, it could do nothing; it could not make peace, because peace repels war, the right of making which is delegated to Congress; and it could not form alliances for the same reason. But gentlemen, he observed, seemed not to recollect the old maxim, that he who proves too much, proves nothing. The President, say they, can not repeal the excise! No, but the President can make a peace without the concurrence of that House, and fortunate it was that he could do so.

"We now, said Mr. Hardin, feel the happy effects of that power, and conceive that a treaty of peace has been accomplished without any encroachments or pretended encroachments on our congressional acts. The power to treat generally, he said, was vested in the President by the Constitution, but to the law of nations it was left to determine the limitations of that power. If it be true, said Mr. Hardin, that, by the terms of the Constitution of the United States, this treaty is already the law of the land, then is the treaty guaranteed by that Constitution, and yet, gentlemen insist that it is not valid, and that this House ought to be consulted. By the Constitution, we are forbidden to be heard on the subject, yet they will have it otherwise, and, by this species of indirection, this left-handed course, bring the treaty under our legislative cognizance. Sir, I say we can not do indirectly that which we are forbidden to do directly. Treaties might be made, no doubt, he said, for the execution of which it might be necessary to call upon the House to make laws—offensive and defensive treaties, for instance, which could not otherwise be carried into effect—but when, as in the present case, the treaty was complete, and capable of executing itself, nothing of the kind was necessary.

"As to the instances which had been adduced of Congress being called upon to enact laws for carrying treaties into effect, he believed that there was not one of them similar to this. The case of Jay's treaty was not. The Federalists supported that on two grounds—one that it was a good treaty, the other that, whether good or bad, it would not be consistent with the honor of the country to reject it—but it never was brought forward as this is, a re echo of itself in the shape of a bill. And, as to the cases taken from the proceedings of the British records, the organization of that Government

was, in all respects, so different from ours, that it was impossible to argue fairly or conclusively from the one to the other."

Mr. Hardin participated in the debate in relation to the revenue, and urged tax reductions. He was ranked with the opponents of the administration of President Madison on this and other questions. In his speech on the bill for repeal of the direct tax, he freely criticised the administration and its modes. In the same speech, he made sarcastic allusions to Mr. Clay, which the latter, with some temper, resented. Mr. Clay was a friend of the administration. He, perhaps, did what he could in his capacity of speaker to discourage and embarrass Hardin in his attempts against it. Hardin made more than one effort to get the floor before he succeeded. On the occasion of one of his failures, when ruled not in order, he retorted that, "being a new member, he knew little of what was called order in the House, and did not mean to violate it; he had heard a great deal about it, but had seen very little of it since he had taken his seat." On January 24th, on his motion to declare the repeal of the direct-tax expedient, he made a speech from which the following is taken:

"Mr. Hardin said that on Saturday last he had notified the House that in some shape or other he intended to bring the question before them as to the expediency of repealing the direct tax; that on that day he had made one or two efforts to bring the question directly before the House when in Committee of the Whole, but every attempt failed, because, as alleged by the Chair, it was not in order.

"It ought not to have been a matter of importance to the Chair, in his endeavors on that day to present the question for consideration, whether he was or was not exactly in trim order, because, if a man be entitled to admission, his bowing at the door like a Frenchman or an Englishman, a beau or a clown, as long as he behaved decently, did not add to or diminish his right. Nor did he believe that this want of a little ceremony deemed important by the Chair ought to have prevented him from being heard upon a great national question when he was solicitous to address the House on the subject, or because he had at that time the complaint so common to some gentlemen in this House, to-wit: the speech-making fever. Mr. Hardin said that the amendment to the resolution of the Committee of Ways and Means having been offered by him, it laid him under some obligations to the House to assign the reasons which had induced him to do it.

"Mr. Hardin said he approached the subject with great diffidence and reluctance. Diffident he was, because he distrusted his own capacity to do the subject justice; and reluctant he was, because to his great regret he had witnessed in that House an unconquerable indisposition to alter, change, or

modify anything reported by any one of the standing committees of the House. He said the manner in which the legislative business was conducted destroyed the freedom of legislation altogether. The President signified his will to the heads of departments. They made their annual report to the House, recommending the adoption of certain measures. It was pretty well understood that what they recommended was the will of the Executive. The reports of heads of departments were referred to the standing committees, a majority of whom were followers of the Executive. They kept in secret conclave for a month or two, until the House became all anxiety, and solicitude was on tiptoe. Each day an inquiry would be made when they would report.

"Not ready yet, would be the answer. The members of the committee looked grave, pensive, and melancholy, as if oppressed with a mighty weight of thought. At last they had burst upon the House with their report; and what was it when made? A mere echo, a mere response to executive will, with small and immaterial variations, intended for the purpose of inducing the House to believe that they had matured the subject well, when, perhaps, they had never thought about it; pre-determined from the first, to re-echo back in substance the Presidential will, and when the report thus made finds its way into the House, it is fixed. Right or wrong, it must not be altered. Each member of the committee adheres to it, each hanger-on applauds it, and all, as the poet says, 'Who live and never think,' support it. Mr. Hardin said that independent of the disadvantages he labored under as above stated, he also felt a little chagrined at the manner in which these questions respecting the taxes, direct and indirect, are brought before the House. Each item of taxation being separately discussed, each wheel of the machinery is separately presented, and we are admonished not to touch it, because the whole work will be stopped if you touch one of the wheels. I have heard of many maneuvers in military and naval tactics. This, sir, may, for what I know, be a system of legislative maneuvers, and it is a most admirable one to answer the object intended. I know of many who would gladly make alterations in the system, but do not attempt it for fear of breaking up its foundation. The committee have had it under consideration for a month or two, and we ought not to meddle with it. Mr. Hardin said the task was too herculean for him to believe that he could effect and procure the adoption of the amendment proposed by him. Hence arises, said Mr. Hardin, my reluctance, Mr. Chairman, to address at this time this honorable committee; but as I pledged myself to the House on Saturday last I would make this effort to repeal the direct tax, I now proceed to redeem that pledge —to perform that promise.

"It is contended by those in favor of the continuation of the direct tax, among whom I am sorry to see my colleague, the honorable Speaker, first, that the direct tax is necessary, in aid of the present and prospective receipts

of the Treasury, to enable the Government to meet the demands against her, which consist of the necessary expenditures for the civil, diplomatic, and miscellaneous expenses; the military and naval establishments; the interest on the national debt contracted since the war. It is furthermore contended, even should the sum proposed to be raised by the continuance of the direct tax be not actually wanting for the purposes and objects above alluded to, yet, that the system itself ought to be preserved, and ought never hereafter to be abolished, because it will enable Government to extend her internal improvements, add a large sum to the sinking fund, and, also, by preserving the system, the machine can readily be put in motion whenever another war or the energies of the Government may demand.

"The first point which I shall endeavor to prove, Mr. Chairman, will be, that the sum contemplated to be raised by the direct tax, for the purposes mentioned by those who are in favor of the tax, is not necessary to effectuate those objects. Secondly, even if it should be necessary, sooner than the tax should continue, it would be better to reduce the standing army from ten to six thousand, which reduction would relieve the treasury from an annual demand of nearly the net proceeds of the direct tax. I shall also endeavor to show that if the tax be not necessary to enable the Government to meet the demands against her, it ought to be repealed as a very unwise and odious tax; one oppressive in its collection to the Government and oppressive to the people. I shall, in discussing the several points, in passing along, notice such observations as occur to me, and I deem materially pertinent to the point, which were made in opposition to the doctrine I now contend for. And lastly, as we have in this House heard much of national glory, and in what it consists, particularly from the gentleman from South Carolina, I shall give, as briefly as I can, what constitutes the national glory of a Republican Government. As to the first point I propose to establish, permit me, before I enter into an enumeration of facts relating to the demands against the Government, and which she will be bound annually to pay, and also of the probable receipts of the treasury, to inform this House that I have no data to make my calculation from except those furnished by the Secretary of the Treasury; and I am induced to believe that his statements of facts, so far as I rely upon them, to prove the points I contend for, will not be doubted, for when he makes his estimates from conjecture they are made, it is evident, as unfavorable to my side of the question as he could possibly make them.

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"To get the money, Mr. Chairman, into the public coffers is the object; to apply it to the sinking fund is the pretext for getting it; thus the real object in collecting the money may be three or four-fold. First, to have money at hand to squander it away upon flatterers and favorites. Secondly, to keep up the system of taxation to strengthen the executive by the additional means of distributing offices, and, perhaps, added to these reasons

there may be some little reluctance at seeing some favorites go out of office who are now in, and who must be turned out if this law be repealed; or peradventure, though the idea I acknowledge is somewhat romantic, to give the heir apparent when he fills the Presidential chair (Mr. Monroe) the popularity attendant upon the repeal of such odious laws, which will be the means of insuring his re-election. But we are told, Mr. Chairman, that this resolution, to which I propose the amendment, is only for one year; this is only sugaring the pill to make us take the medicine the better, for if it be necessary for one year it is necessary for years to come. It will be recollected by the House, that on account of the peace the receipts of the treasury for 1815 were upward of $13,000,000 more than the demands against the Government, and also the receipts which will accrue before the double duties expire, which is in June, 1816, will bring such a sum into the treasury as will enable the Government to meet the extraordinary demands against her, which demands consist in the appropriations this session to pay off the demands, due the army and the treasury notes now in circulation. The secretary, in his report, says that it is not necessary to legislate for one year only; that the treasury is competent to meet all the extraordinary demands against it this year.

"But if it were otherwise, and it were necessary to reduce our expenses within the income from duties on commerce, Mr. Hardin said, he would reduce the army. He was aware that, in approaching this subject, he touched a hornet's nest, and perhaps would be stung. The army, which in 1802 was deemed so hurtful, was now the favorite, because by its means our friends get into office, and we must have an army of ten thousand men; that is, on paper. It was not cared whether we had the men, so that we have the officers and the surgeons, contractors, etc. So that we have the hulk of this mammoth, we care little for the blood and sinews. No, Mr. Hardin said, the ranks of the army are not filled. During the late war, though we had sixty thousand men on paper, we had at no time twenty-five thousand in the field. We had plenty of officers—so many of them that he had heard a suggestion that they ought to be reduced and organized so as to assist to fill the vacant ranks. He was, he said, for reducing the army to six thousand men. But the House was told the army must not be reduced; that the defense of the nation ought to be regarded as a primary object. Certainly; but was it to depend upon a standing army? Let me remark, said he, that this argument is inconsistent with the genius of our Government, which requires us to depend upon the militia for our defense. For that object every citizen is a soldier. Whenever this people can not defend their liberties, then has the body politic become rotten, then may we bid farewell to liberty. But it is said that these ten thousand men are necessary for garrison service. Where, he asked, were garrisons necessary? If they were necessary for the whole country, from the district of Maine to the mouth of the Mississippi, there

ought to be a hundred thousand instead of ten thousand men. What are three or four hundred men in this or that spot for the purposes of defense against an invading enemy? Mr. Hardin said he would like to see a garrison at New Orleans and at one or two posts on the frontier. But of what account would be a few at one place and a few at another? There was a regiment at Prairie du Chien; of what account are they? These Indians have no dread of permanent garrisons, but of mounted riflemen. What could a few decrepit men do against a horde of active and vigorous Indians? But we are to have not only this force, but the executive project of an invalid corps of two thousand men, to be used for garrison service, and we are to put these one-legged and one-armed men to watch the Indians on the Wabash, who flit about like ghosts—here to-day, there to-morrow; who can travel a hundred miles in a night on an emergency; who have an open frontier if they wish to come, to which garrisons at two hundred miles apart afford but little protection. These Indians dread a contest with the United States; they know the people of the West only wish an opportunity to crush them, and that they have the ability to do it. Where, then, said Mr. Hardin, are we to employ our ten thousand men? Against Spain, says the Speaker; for, somewhere or other, either at a ball, party, sleighing match, or in a hack, the Spanish minister had signified something about the Floridas. What did he say, or where did he say it, no one knows. The story about this talk of the Spanish minister put him in mind of the preacher who gave notice that he should begin at such a point on Kentucky river and preach all the way down from day to day, and the particulars of that story were about as well defined.

"But if it were true, was this to be held up as an object of terror to us? Proclaim, said Mr. Hardin, to the people that Mexico is free soil, that the land on Red river will be theirs if they conquer it, and the Western people will swarm upon it like the locusts upon Egypt. These ten thousand regulars are not wanted for that purpose; the Spaniards would not be a breakfast for us. But these men are to be kept up. Why? Because the Spanish people have rebelled against their own government in the provinces. The very circumstance of the rebellion is the strongest reason why Spain should be friendly toward us. She knows, if the United States were to march its forces there, the standard of liberty would be everywhere erected. This, then, is no reason for keeping up the army. But, it is said, the affairs of Europe are unsettled. When were they ever more settled? When the army was reduced during Jefferson's administration? Mr. Hardin said he believed not. We are under no obligations to engage in every contest which arises in Europe. What power in Europe, he asked, has a disposition to invade us? None. What danger menaces us from any quarter? None. Why, then, keep up an army to fight windmills? Are the double and triple alliances to be the order of the day, such as those of George I.? Mr. Hardin said he abhorred them and we had no business with them.

"But the gentleman from Kentucky (Mr. Clay) had said, instead of diminishing, he would have increased, the army. Was it possible that the gentleman had lost his old ideas on this subject? Was it necessary to the safety of this republican government to maintain large standing armies? Or was it, Mr. Hardin said, that the gentleman had snuffed the tainted gales from the plains of Waterloo, and was disposed to fight and to negotiate with every nation? During Washington's administration the army had never been as high as even eight thousand men; and there was less danger now than then. The powers of Europe had as little regard to justice then as now. We were then weak compared to what we are now, and more inviting to foreign invasion, as being an easier prey. When we have increased from three to eight millions, can we be in greater danger than we were then, when a smaller force was deemed sufficient? Every means of offense and defense have proportionately increased with our population. The importance and magnitude of the establishments in Europe have increased, it is said. In name they may, but they are not in effect as strong; we shall soon see the military powers, drawn together by a common object to put down Bonaparte, plunge their daggers in each other's bosom. Mr. Hardin said his hair did not stand on end at the glimmer of moonlight through the trees. These fears, which had been expressed by other gentlemen in debate, might arise from minds a little distempered by too great a desire to preserve the nation. Mr. Hardin said he was opposed to a standing army on principle; and the more so, because all the train of bloodsuckers about it were to be sustained by taxes on the people. Down with the whole system, said he; down with it, like Lucifer, never to rise again; and let us depend on militia, well trained and well disciplined—on militia, happy at home; not a militia who are ground down by taxes—a militia, not like dogs and spaniels, that the more you chastise them the more they like you. Militia must be disciplined; but they will not fight without affection to their country, created by an attention on your part to their interests. There are two kinds of patriotism, Mr. Hardin said—the clamorous whip-syllabub patriotism—one rain will wash it all off; and the other, that of the man who reaps his own harvest, cuts his own grain, and uses it after it is cut; the man who has a fireside and a farm of his own, who, like the Scythian, refuses to go from home to fight, but will fight to the death if an invader comes to his father's tomb. Carthage had a standing army, and she fell. Rome had but a militia, and defended herself. The instant she established a standing army, disorder, confusion, and mobs ensued, and she soon became, by means of her military champions, a prey to the veriest despots the world ever knew. These are the effects of standing armies, to maintain which the direct tax is to be retained. I have made these remarks with a view of showing that we ought to get rid of these taxes, even at the expense of this governmental favorite. If necessary, let us strangle it. Mr. Hardin said, however, he would not go the length of some gentlemen in their

ideas of economy. He was in favor of a gradual increase of the navy, one consistent with our means, and for all those expenditures which a liberal, not a profuse, policy will require.

"Mr. Hardin proceeded to examine the merits of this tax, to show that if it could at all be dispensed with, it ought to be put down. The money arising from the direct tax was the most expensive that ever came into the treasury; it is put down as costing three hundred thousand dollars in the collection; but, Mr. Hardin said, he would venture to say that the actual cost of collection would be found to be not less than four or five hundred thousand dollars, what with your collectors, commissioners of the revenue, and a hundred other officers. Was it not important that contributions should not be levied in this inconvenient and expensive mode? If the money must be collected, why not find a way of loosing the purse-strings more conveniently? If money be collected by indirect taxes, the consumer has the option whether or not he will buy the articles so taxed, whether he will run his stills or not. He has an option, and this of itself sweetens his feelings.

But, when the proud, official, strutting, consequential character, the deputy collector, waits upon him with his saddle-bags upon his arm, and takes his bed from under him to pay the direct tax, he feels indignant, and wishes he had not been born in such a government. Besides, the direct tax is that tax by which the State governments are, and always must be, supported. Is this mode of taxation selected in order to let the people know who protects them? Surely not. This was a tax, hateful to the people, and subjecting them to innumerable frauds. The best half of the men employed in this business of collecting a few cents from one, a few from another, and so on, were scoundrels and cheats, and would not stop at doubling the amount of the tax they ought to collect from a man who was not well enough informed to detect their roguery. Fortunately, or unfortunately, it had been his duty, as a professional man, to detect practices of this kind. These collectors, he said, were something like the man's son whose father told him to make money, honestly, if he could, but to make money. Most of them cared but little how they made it. The direct tax is a costly, odious, and oppressive tax, which strengthened the arm of the Government by oppressing the people. He had witnessed, with some regret, the rapid increase of executive patronage; he had witnessed, with pain, the efforts to make the arm of the mighty stronger—to extend that executive influence which had already swollen to a mighty torrent, carrying devastation before it. Instead of this he hoped to see the streams reduced, dried up as fast as they could be; so that this river, instead of carrying destruction to every one coming in contact with it, should be confined within its banks, as in the time of General Washington; he wished to see it used in the good old way, and the good old way, believe him, was, at last, the best.

"Mr. Hardin said he had heard a great deal since he came here about what is called the national glory. What it meant precisely he knew not. If the glory acquired in the late war was meant, he begged to distinguish Congress and the President from the sailors and the army who fought our battles. The latter had acquired glory by land and sea which would last until the history of these times shall be no more. As to the President and Congress we had better say nothing about the glory they have got. I know several gentlemen in Congress who obtained in the war imperishable fame, who carry about them honorable scars. But their merit does not attach to Congress. Congress met in October, 1811, to prepare for war. It was declared in June following, and their first troops, in a month after they went out, had to come back and beg for clothing from the ladies of Kentucky. How will Johnny Congress feel when the pen of history tells this fact? When the pen of the historian narrates the disgrace of the affair at Bladensburg, how will the President and Secretary of State feel? How will the members of the executive feel when it is recorded that men, drafted in August in Kentucky, sent down in November, were drawn up on the West bank of the Mississippi river, without arms? It was something like a crop he once heard of on a plantation: The overseer had a share and a half, and every other hand had a share but Jim, and he had none. He was afraid that Johnny Congress would come out about the glory of the war, as Jim did in the crop. He was astonished to hear the gentlemen talk about glory gained by the Government in the war. Many of our soldiers and sailors had acquired glory, and more than one member of this House had distinguished himself in a manner to do them honor, and make their children proud of their name to the third or fourth generation. But the Government had gained none. We had not, he said, gained any one point for which we went to war, and we lost a part of our fisheries, part of our tonnage, etc., and this is the amount of our gain. He differed from gentlemen in their views of national honor and glory. It did not consist, he said, in a standing army, but in the reduction of the national debt and the expenses of Government also, so as that every citizen should be enabled to enjoy the fruits of his own industry, and be ready on occasion to defend his own fireside. It seems we are to have national glory by opening great military roads from here to New Orleans—one in this direction, one in that.

"Whenever a farmer in the country, said Mr. Hardin, purchases more than he can pay for, we suspect he is going to ruin, and that a commission of bankruptcy will soon issue against him. Whenever a Government lavishly disburses money, more than her income, it equally proves that the Government is going to ruin. Establish a moneyed aristocracy, separate and distinct from the body of the people—which will be the effect of your system—and in the course of a few years the ax will be laid to the root of the tree of liberty, and the last stage of freedom in this world, and when it falls,

it will fall with a mighty crash, never again to rise. Such will be the end of this mighty glory. How can we pay off the national debt, if we give in to these projects of invalid corps, military academies, turnpike roads, canals, etc , which are to consume so much money? The national glory consists in the pristine principles of this government, in the blessings of tranquillity and comfort at home and peace with all foreign powers."

The most important measure of the session, by far, was the bill introduced by Mr. Calhoun, for chartering a national bank. In 1811 a similar bill had been brought forward by the Federalists. In the House it had at that time been indefinitely postponed, and in the Senate was rejected by the casting vote of the presiding officer. Mr. Madison was then hostile to the measure, and that circumstance, in large degree, contributed to its defeat. The views of the President had, however, undergone a change. In the interval, a foreign war had been fought and honorably terminated. The financial exigencies of government had largely increased. Crude systems of banking throughout the country had begotten great monetary derangement. At such a time reasons might well have operated that, under other circumstances, would have been powerless or insufficient.

Mr. Calhoun and Mr. Clay were the especial champions of the bank measure. Among their able allies were Forsyth, Lowndes, and Pinckney. Its opponents had also some bright names in their ranks: Gaston, Pickering, Randolph, and Webster. With the latter stood Mr. Hardin. Mr. Clay had opposed chartering the bank in 1811; so had Kentucky, and so had Mr. Hardin. The latter was, at the time, a member of the State Legislature, and that body had instructed the Kentucky Senators at Washington to vote against the charter, because of its unconstitutionality. Unconstitutionality was the ground of Mr. Clay's opposition at that time. He charged that the friends of the measure "sought for some vagrant power in the Constitution to authorize it"—a form of expression retorted upon him in the debates of 1816. Mr. Clay, like Mr. Madison, had, in 1816, changed his opinion, but Mr. Hardin had not. The latter made a speech during the session on the subject, but it was never reported. Twenty years later, when Mr. Hardin had also modified his views, and was advocating the re-charter of the bank, Francis P. Blair, editor of the *Globe*, glided into the House "looking," said Mr. Hardin, "like the ghost of famine," and threatened that he would republish the speech of 1816. Doubtless he would have done so, had a copy existed. The allusions in this speech to Mr. Clay, as preserved by

tradition, were exceedingly caustic. Mr. Clay's inconsistency afforded an opportunity which the most unaggressive would have let slip with reluctance. To Mr. Hardin it was irresistible. In what manner the occasion was improved is left to conjecture. The report says little more than that he "delivered his views at length." Randolph not only endorsed the speaker's views, but having an antipathy to Clay, Hardin's assault on the latter was far from disagreeable.

"Hardin is like a kitchen-knife whetted on a brick," said Randolph, "he cuts roughly, but cuts deep." The bill passed, but the majority in the House, on its final passage, was only nine. The Kentucky delegation were evenly divided.

Says General Preston:

"I once asked Mr. Hardin which he considered the best speech of his life. He said that, so far as he could himself be a judge on such a subject, it was one he made in reply to Mr. Clay in the House of Representatives. Against the measure chartering the United States Bank Mr. Hardin had spoken and voted in opposition to his party friends who followed Mr. Clay, who favored it. After the vote, Mr. Clay indulged in a heated phillipic against Mr. Hardin, charging him with desertion of his party friends. This charge of Mr. Clay produced a great effect on the House, and he determined to give the speech such a reply as it deserved. He said he feigned to be more humiliated and pained than language could express, and indulged, when he came to speak, in many apologies that he did not feel; and having thus propitiated the House and obtained its pity—which he said was necessary to get a good foothold against Clay, not for purposes of invective, but of ridicule—having achieved this, he then went into the question by what right Mr. Clay constituted himself the speaker's censor or that of any other member of the House. He said that if that were a just title perhaps the Pinckneys, the Randolphs, and others might claim precedence over the fiddler of the Hanover slashes.* He might doubt, in case of contest, whether he ought to award precedence to the member of the Fayette district. At this point both sides of the House broke into laughter, to Mr. Clay's intense astonishment.

"Finding that he had obtained the favor of the House, he advanced further, and then acknowledged that Mr. Clay was the head man of both Houses of Congress. He made this acknowledgment, he said, in order to place his loyalty beyond doubt. He then approached the central question, which was whether the measure pending was a test of party fidelity. This he treated in a free and bold way, citing Mr. Clay's invocations to independence of thought in acting upon the highest measures. He spoke of how much he admired Mr. Clay for his courage on many occasions, alluding among other things to his mission to England and his course in regard to the Newfound-

*Mr. Clay was an accomplished performer on the violin.

land fisheries and the mouths of the Mississippi, and then he left it to the sense of justice of the House if one who was as devoted as himself, who, with the rest of his followers from Kentucky, knew nothing but to vote on all cardinal questions as Mr. Clay dictated, might not claim the right to vote as he thought fit on a matter not involving party principles without having his loyalty questioned. He would not appeal to the justice of the House alone, but to that magnanimity for which the gentlemen had always been distinguished, to allow him a little cooling time until the next day, at least, and he hoped that Mr. Clay would then ask a reconsideration of the matter, so as to allow him a chance to still prove himself loyal by changing his vote.*

"He had a great ovation at the end of his speech, particularly from the opposite party; but his friends advised him not to allow his remarks to be published, and they were accordingly suppressed. Mr. Clay became so enraged that he left the house."

There was a bill introduced by Colonel R. M. Johnson this session, commonly known afterward as the "Compensation Law." Theretofore members of Congress had received for their services, besides mileage, six dollars per diem. The bill referred to changed this mode of compensation to fifteen hundred dollars per annum. The chief argument for the bill was that six dollars per day were inadequate, yet where the session was protracted members were charged with doing so to obtain their per diem. The measure met with but little outspoken opposition, and was made a law. All the Kentucky delegation voted for it save Mr. Desha, who voted nay. This simple story, like many another, has a sequel which will be related in another chapter.

*This is not meant for a substantial report, but merely a specimen of the tone of his remarks.

CHAPTER VII.

AN OLD-TIME SALARY GRAB.

FEW congressmen were ever more active, efficient, and influential, during their first session, than had been Mr. Hardin. He had not been restrained by unfamiliarity with parliamentary rules. While not indulging long speeches, he had expressed his views on all proper occasions forcibly and perspicuously. He had acted on the principle that it was his right and duty to promote good, and defeat bad legislation, and that he should be no mute or idle spectator of its progress. He had made himself felt by Clay as an opponent—by Randolph as a friend. He had demonstrated signal ability in the business of legislation, and had taken high rank in Congress when that body, according to Mr. Webster, was at its best in the way of talent.*

The first session of the Fourteenth Congress adjourned April 30, 1816. Mr. Hardin journeyed homeward, conscious that he had made a faithful effort to do his whole duty. The newspapers had reported congressional proceedings, as the session progressed, and reports showed he had been active. He had been accustomed to professional success, and, thus far, his brief political career had been fortunate. Under these circumstances, it was but natural that he should have anticipated the welcome and approving plaudits of his constituents. Indeed, he felt entitled to no less. But, alas! for human hopes, this reasonable expectation was dismally disappointed. On his arrival at home, Mr. Hardin found Kentucky, in common with the whole country, suffering from a fit of consuming wrath, over the passage of the Compensation Law. The center of this excitement was Kentucky. George D. Prentice said the "demagogues" had stirred this tempest. Doubtless, they had contributed their mite, but it was denounced everywhere, and by all classes. It was the topic of conversation in private circles, and the theme of harangue in popular assemblies. The argument went *nem. con.* The feeling grew from day to day, and from week to week, until, at length, popular exasperation arose to such a height (if we may trust the hyperbole of Mr. Prentice) that the "habitual and long-cherished reverence for their

*Daniel Webster, by Henry Cabot Lodge, page 64.

favorite Clay seemed half forgotten by the people, and there was every probability that he would be cast down like a worshiped idol, when its votary has found that the tale of its divinity is but a fable."* This was further illustrated during the heated congressional race that ensued between Clay and Pope ("one-armed" John Pope), by the remark of an Irish voter: "For whom, Jerry, do you mean to vote," he was asked. With a shrewd look, he replied: "Faix an' sure, docthur, I mane to vote for the man who can't put more nor one hand into the threasury." What seems to modern observation "much ado about nothing" presented a different aspect in 1816.

The purchasing power of money was far greater than now. The popular estimate of the value of official services was extremely low. There was an idea afloat that patriotism ought to actuate those charged with legislation rather than motives of gain. The members of the Kentucky Legislature then received but $1 per day besides mileage. The judges of the Court of Appeals had received an annual salary not greater than $1,000 prior to 1815. It was easy for selfish aspirants to make a strong point against the compensation bill from such premises. Mr. Hardin had not only voted for the obnoxious bill, but approved it in face of all opposition. In his judgment it was both a just and wise law. But to stem the tide against it and the unpopularity of having voted for it was difficult, and the result uncertain. So he discreetly declined standing for re-election. Only two of those who had voted for it were returned—Henry Clay (after a hard contest) and Colonel R. M. Johnson. Mr. Desha, who had voted against it, was again elected. The remaining seven of the delegation, including Mr. Hardin, succumbed to the inevitable. "Colonel Johnson took the stump and made a resolute effort to justify the measure, but he soon found it was all in vain. It was amusing to hear the colonel, who was not an eloquent man, make a passionate speech in favor of the measure, and conclude by promising to vote for its repeal, because such was the will of the people." So wrote Amos Kendall, who erroneously stated that every Kentucky member who had voted for the law was defeated except Clay and Johnson. Hardin was not a candidate—neither was his colleague, Alney McLean.†

But for his unlucky support of this law Mr. Hardin would doubtless have been re-elected, and thus have enjoyed the advantage of continuous service, which frequency of terms, with intervals, can never bestow. What with these advantages he might have accomplished for himself and his country it is needless to conjecture. It was unfort-

* Henry Clay, by George D. Prentice, page 124.

† Autobiography, page 178.

unate for his career that it was thus interrupted so soon after it had auspiciously begun.

The vacation passed and Mr. Hardin again set out for Washington to attend the second session of the Fourteenth Congress. He had concluded to visit his birthplace in Pennsylvania, which did not require much diversion from his direct route. Before starting from home he had equipped himself with a good horse and saddle-bags, carrying in the latter such wardrobe as the exigencies of society demanded of old-time Congressmen. The journey was a long one, and, as it proved in this instance, a lonesome one. Much of his road was rough and through a wilderness where he esteemed himself fortunate in finding lodging places at nightfall. As he passed the Virginia line the country was better populated, and occasionally the tedium of his journey was interrupted by the company of a traveler going his way. One even-

"WHICH IS THE CHEAPEST TAVERN?"

ing, as his road was passing the eastern declivities of the Blue Ridge, he approached a town where he proposed to rest for the night. Behind him he heard the sound of horses' hoofs. In a few minutes three dapper-looking young gentlemen mounted on spirited horses overtook him. From their dress, outfit, and manner he readily recognized them as belonging to the Virginia gentry. They exchanged the salutations of the road, and Mr. Hardin discovered that they—as was characteristic of this class—were sprightly, good humored, and satisfied

with themselves on all points. On the other hand the young men, from a certain air of careless awkwardness and the unpretentious character of his trappings, set Mr. Hardin down as a country bumpkin. But few words passed before he discovered how he was esteemed by his young companions, and he thereupon resolved to act the part attributed to him. He soon learned from them that they were on their way to the town near by; that a debating society would meet there that evening, and that they were to participate, and, in fact, were leaders in the debate. He inquired the question to be debated. It proved to be one with which he was entirely familiar, having had occasion frequently to debate it in his congressional canvass. He was asked if he ever made speeches. He replied that he had spoken in debating societies, but that they never debated questions like that in Kentucky where he lived "Which produced the most happiness, pursuit or possession," and the like, he said, were the kind of questions debated in the West. From his artless questions and answers the young gentlemen concluded that they had found a character who would afford some amusement if he could be induced to speak at the debating society. After having made several awkward excuses, he yielded to solicitation and agreed to speak if allowed to come *last.* He said he could "pick up some points from other speakers and be sort o' prepared."

He asked how many taverns there were in the town, and which was the cheapest. His new friends told him there were two, but that they would stop at the better one, and he must go with them—which under hospitable compulsion he did. The young men were convinced they had encountered an innocent abroad, and privately gave out in town on their arrival that there was fun in prospect. A larger crowd than usual gathered that evening at the debating hall. Expectation was on tip-toe. The young gentlemen escorted their guest (for such they now esteemed him) to the hall, and ostentatiously seated him where the audience could have a fair view of him. Mr. Hardin was more artless than ever. The audience made no attempt to conceal its amusement. The debate in due time began. Mr. Hardin's young friends of the road made speeches, and as they had carefully prepared for the occasion, they acquitted themselves with credit. Finally it came to his time.

He had managed to tell his name in such way that it had not been understood. In fact, his name had been a matter of indifference to his new friends. "At that moment," said Hardin long afterward,

"I never felt in more elegant trim for speaking in all my life." He arose with an assumed awkwardness that caused a titter to go around. He slowly straightened his stalwart form—assumed an air of dignity that completely changed his appearance—his eye lightened with the fires of intelligence, and in the modulated voice of a trained orator he began his speech. He illustrated all the art and power of oratory. Argument, pathetic eloquence, wit, invective, and ridicule came in full and overwhelming tide. He metaphorically tore his roadside acquaintances limb from limb. He ridiculed them; he dissected them. The audience was at first astounded. They questioned the sense of sight and hearing. But as the situation dawned upon them they were carried away by enthusiasm. They laughed and wept and stamped and shouted. He at last concluded by informing the audience that he had truly said he was from Kentucky; that his home was at Bardstown, which, on account of its refinement and learning, was sometimes called the Athens of the West—and that he was a member of Congress and then on his journey to Washington City. The young gentlemen who had originated the jest meantime had slipped out and made good their retreat. Next morning a large and admiring crowd gathered at the tavern to speak to him and bid him good-bye.

Although negligent as to dress, he was not so as to his lodgings, notwithstanding his pretense to the Virginians of seeking a cheap hotel. He was always the patron of the best hotels, and did not lack appreciation of tasteful and comfortable surroundings. While reputed economical of expenditure, he had a contempt for niggardliness arising from such a sentiment. His stopping places in Washington were selected with an eye to what propriety required of the representative of an intelligent and respectable constituency, no less than for that consideration a gentleman owes to himself. Thus he had better opportunities for social contact with the more intelligent of his colleagues—with many whose names have adorned the history of the country, and they in turn came to appreciate him.

He was present at the opening of the session. Mr. Clay, recovered from his summer's canvass, was at his post. The Kentucky delegation of the first session was in attendance, save James Clark. He had resigned his seat for a circuit judgeship. Thomas Fletcher had been chosen to fill the vacancy. General Fletcher had been a member of the Kentucky House of Representatives for Montgomery county, in 1803, 1805, and 1806, respectively. Residing in that ter-

ritory out of which Bath was subsequently carved, he represented it in 1817, 1820, 1821, and 1825.

It was during his last term in the State Legislature that Simon Kenton visited Frankfort. Seventy years old, poor, in tattered garments, mounted on a poor horse, the old pioneer entered the State capital a stranger. He came seeking from the State, that he had assisted so largely in reclaiming from the Indians, a release of some of his mountain lands from taxes. While wandering about the streets, a desolate, lonely old man, General Fletcher met and knew him. He lost no time in having him decently clothed and kindly entertained. Kenton quickly became the object of great and hearty attention. He was taken to the capitol, while the Legislature was in session, and placed in the speaker's chair, and introduced as the second great adventurer of the West to a crowded assembly of legislators, judges, officers of government, and citizens. The simple-hearted old man called it the "proudest day of his life." His lands, it is needless to observe, were released.

General Fletcher's congressional career ended with the Fourteenth Congress. Mr. Hardin, at this session, was appointed a member of the standing committee *on claims*, and of the select committee on *a uniform national currency*. In the course of the session, he took part in debates concerning a resolution to repeal the duties on licenses to distillers, on the motion to suspend the act concerning property lost in the late war, on the bill to amend that act, on the report concerning military bounty lands, and on the contested elections of the Missouri delegates. But the most prominent subject of the session was the repeal of the Compensation law. "Scarcely," said Mr. Hulbert, "had the doors of Congress been thrown open, at the commencement of the session, when motions were made in both Houses for the repeal of the Compensation act. Why," said he, "this extraordinary haste?" He thought the clamor against the law was made by newspapers, and that it was but the voice of party spirit, faction, and misrepresentation. A majority of Congress expressly or impliedly dissented from this view, conceding, in effect, that the popular voice was against the law. The chief matter of debate concerned the question as to the right of the constituent to instruct his representative, and the duty of the latter to obey.

Nine days were consumed in this discussion. Of the Kentucky delegation, Messrs. Desha, Clay, Fletcher, McLean, Hardin, and Taul made lengthy speeches. Mr. Ormsby was absent during the session,

and Messrs. McKee and Sharpe remained silent. Mr. Randolph was on his feet more frequently than any one else, attacking those who had voted against the bill for receiving the salary it provided, and those who had voted for it for favoring its repeal. He insisted, and offered an amendment to the effect, that, if repealed, members should refund the sums received by them in excess of former compensation. Mr. Ross, of Pennsylvania, complained of a supreme court judge of that State who had drunk a toast with the sentiment: "The Compensation law—the receiver is as bad as the thief." Randolph also said, in debate, that, if he had voted against the Compensation law, he would as soon have been caught with his hand in his neighbor's pocket as to have taken the money. So, the little prudent minority, who had voted against the law at the former session, were made exceedingly uncomfortable. Randolph was in his element, making it unpleasantly warm for everybody. He thus was a conspicuous mark, and was well abused. He quoted, not inaptly, in one of his retorts: "The little dogs and all—Tray, Blanche, and Sweetheart—see, they bark at me." Mr. Barbour, of Virginia, with pallid face, wished to know if, by this quotation, he alluded to him. Randolph contemptuously responded that "he believed he was entitled to the floor," and, thereupon, proceeded to say other things amusing to modern readers, but anything else than amusing to his honorable colleagues.

The remarks of Mr. Hardin are reported as follows:

"Mr. Hardin said he had been on the strong side of the question at the last session, having voted in favor of the act now proposed to be repealed, and he believed he should be on the strong side, also, at the present session, being one of those who intended to vote for the repeal of the law. To show his motives for so doing, he said he should offer a few observations, lest he should be branded with the imputation of that kind of political prudence which appeared to characterize the present day, and which always selected the strongest side. He was sorry to hear it said to-day that this subject was rather a mirthful one than otherwise. For his part, Mr. Hardin said, from the time he had voted for the law at the last session he had never felt very merry on the subject. He had felt it a misfortune that he, in obeying the dictates of his own judgment, had been one of those who had incurred the displeasure of the American people, and felt the necessity of humbling himself to obey their will. There was also another reason why he thought the passage of that law by Congress unfortunate, because it had afforded to demagogues throughout the nation an opportunity to ride into every office in the Government; because he was afraid the great hostility shown to that act would introduce a four-pence-half-penny mode of doing business. On that

score, Mr. Hardin said, he did not feel very merry, though he was certainly given to pleasantry sometimes; perhaps not so much so, however, as the gentleman before him (Mr. Ross), who could even be merry in misfortune.

"Mr. Hardin said he was sorry that any unpleasant feeling had been excited, that any acrimony had arisen in the House. He was fully persuaded that those who voted for or against the bill last year had equally acted from honorable motives. After it had passed, would it not have been a mere affectation of delicacy for those who voted against the law to have refused to take the money? If they had done so, Mr. Hardin said, he should not have thought they were sincere. He had never certainly viewed the conduct of gentlemen who voted against the bill, yet took the money, as at all censurable. But there was one remark he could not help making, which he hoped no gentleman would take to himself—that when the obnoxious question was in agitation last year, those opposed to it were as silent as possible; the grave is not more silent than they. The bill had not many enemies, and was openly opposed by very few. Mr. Hardin said he had heard on the question for the engrossment of that bill for a third reading but few nays, and when the yeas and nays were required on that question but fifteen supported the call. What was the inference? That few, if any, more than those fifteen were opposed to that bill. On the next day, when the yeas and nays were called, there were sixty-seven to sixty-nine opposed to the passage of the bill! Now, if there was any gentleman in this House—he did not say there was; he hoped there was not one—who secretly wished that bill to pass, though he voted against it, he deserved censure. He did not know of any such gentleman, and, he repeated, he hoped there was none; but he could not help wishing that much the same zeal had been manifested in opposing this bill at the last session as in condemning it now, and perhaps he and others would not have had to pay the forfeit they had incurred. My time of trial, said Mr. Hardin, is over. I honorably declined a re-election because, I beg you to understand, I could not have been elected without going the rounds and begging pardon for what I do not consider to have been incorrect.

"He could not consent, he said, to go around begging the people to give him a seat in this House. He said he had never considered fifteen hundred dollars for the yearly services of a member of Congress as a *quid pro quo*. The men of talents of our country, Mr. Hardin said, were generally from twenty-five to forty years of age; new men, born to inherit no fortune; men who have worked their way into society, by dint of their own talents and exertions. How could any such man occupy a seat here, unless he received not only enough to defray his expenses, and enable him to live as a gentleman should, but enough, also, to support his family at home, without breaking in upon that small capital he had laid up? Many men, it was true, came here, screwed themselves up in holes like penitentiary cells, and, on six dollars a day, saved more while here than they could make anywhere else.

But men of talents, who came here for a flyer for two or four years, can not support themselves on it as they have been used to live at home. As to the idea of patriotism being a sufficient motive to come here, it was absurd. Patriotism is that which urges a man to serve his country without expectation of personal benefit or reward. But, Mr. Hardin asked, did the gentleman from Kentucky believe there was a single man who ever came to Congress who did not come without some other motive than that for the gratification of his own vanity, to have his ears tingle with the ring of greatness, or for the advancement of his own interest? Such language as that of the gentleman, who considered patriotism the leading and sufficient motive for bringing men here, sounds handsomely, cuts a good figure here or in a newspaper, but there is not much substance in it. No, Mr. Hardin said, it was not patriotism that would bring men of talents here, to the great prejudice of their private interests. He agreed with gentlemen that this House ought not to be the mere stepping-stone to executive offices; not a theater on which a man should show his eloquence a day or two, and then go off in a lucrative embassy to Europe or elsewhere. A seat in this House, said he, was in theory, and ought to be in practice, the most honorable of any station in the Government, for it is held at the will of the people, and not of the President. Mr. Hardin did not go further into the reasons which had induced him at the last session to vote for the compensation law, since the subject had been fully illustrated in the report of the select committee, on every topic but that to which he referred, respecting the class of the people among whom the talents of the country were to be found.

"Mr. Hardin then proceeded to assign briefly the reasons which influenced his vote to repeal the law of the last session. He did not, he said, allow to the right of instruction that latitude for which some gentlemen contended; but with the will, not only of his constituents, but of the whole people of the United States, he thought himself bound, in the present case, to comply. He agreed, whether this will was made known in the form of regular instruction or in any other way or shape, it was equally obligatory. He could not agree with the gentleman from Virginia that a Representative is, from the term of his office, bound to obey the will of his constituents. A member of this House, Mr. Hardin said, was to represent the particular interests of the people who send him to Congress, whenever those interests are in question. Having done that, he is to assume the more expanded and important character of a legislator for the nation, and consult the general good. All general laws ought to be acted on with a view to that which produces the most general good. Am I, said Mr. Hardin, to vote for a law to sacrifice the interests of the whole nation, because it will benefit my immediate constituents? No; I represent my constituents on particular topics, and on general questions consider what the general good requires. Every member of this House is the representative of his constituents; but he is at

the same time a legislator for the nation. I do solemnly protest, said he, against legislative instructions—I detest them more than Adam did the serpent. They are the greatest bane that ever crept into a well-regulated government. It is an encroachment by the States, in their corporate capacity, on the rights of this House. The members of this House, with the Senators, Mr. Hardin said, made laws to operate on the people, not on the States in their sovereign capacity, and the States, therefore, had nothing to do with instructions. These had originated, he said, he had no doubt, in a wish to screen some favorite man here who had been doubtful whether his acts were popular or not, from responsibility therefor to the people. But the people throughout the American continent seem to have expressed their decided disapprobation of the law now proposed to be repealed. Hence, in retracing his steps he should not only follow the will of his constituents, but the voice of the American people. For, he said, if the will of the American people was contrary to that of his constituents, he should obey that will, believing it his duty to legislate for the nation.

"Mr. Hardin said he could not agree with his colleague (Mr. Clay) that the people were dissatisfied with the manner, and not with the matter, of the act of the last session, though such might be sometimes the case in the gentleman's district. In regard to this law, when in my district I met with a sensible man, I conversed with him sensibly; and when I was accosted by a furious demagogue, I gave him as good as he sent; and when I came across a fool, I laughed at him. I would ask the Speaker (Mr. Clay) one question. Does he believe that his constituents, any more than mine, would have objected to the manner, if we had fixed our annual compensation at five hundred dollars? Not a man in my district would have taken exception to such a change in the mode of compensation, unless he wished to come here in my place. Mr. Hardin said he did not believe the present compensation too high, but he must conform to the views of the people who, he had no doubt, wished to see the compensation reinstated in the situation in which it stood before the law passed.

"Mr. Hardin said he felt some little anxiety that this course should be taken, not only because it was the will of the people, but because it would take a powerful tool from the hands of political demagogues. The persecuting spirit had been carried by them to great lengths, in regard to this act so far, as his colleague (Mr. Johnson) had informed the House, that a man in Kentucky had refused to let a young man court his daughter unless he would forswear the compensation law. I never heard of this fact before, but do not doubt that the honorable gentleman either knows the fact practically, or has heard of it. If practically, the old gentleman stood very much in his own light, for I do not know how he could have suited his daughter better than by promoting instead of preventing the match. But all through the State of Kentucky the same spirit prevailed. If a man came into the

county court to be appointed a constable or surveyor of the road, he entered his solemn protest against the compensation law. If a petty demagogue wanted to go into the Legislature, he must post up or put in the newspapers his protest against it. To deprive such knaves and rascals of any pretense under that act, Mr. Hardin said, he would repeal it. Why, some of the new fry that are coming into Congress, he had heard, had declared that they would vote for the repeal of the act; and, if it was not effected, would reserve all their pay over six dollars per day, and at the end of each session lay it out in churches and meeting-houses!

"It had been said that money had resumed its former value. Not at all, he said; though he hoped Congress would restore something like life to the circulating medium before they parted hence. Another argument used in favor of the repeal was by a gentleman who, having voted to increase his own compensation, could not resist the exorbitant demands of others for an increase of their pay. That consideration, he said, did not affect him. If it was proper, he would cheerfully increase the compensation of any public officer; if not, he would as cheerfully vote against it. The gentleman from Maryland (Mr. Wright), who had surely spoken in his best manner and done justice to this subject, asked what should be done with the next fry—so Mr. Hardin said he called them—he knew no better name for them—with the next fry that came into this House. They rode into the House on the law of the last session, avarice in their hearts, and patriotism in their mouths! Their patriotism told them they did not want the money, but their avarice told them they did. And for them, he said, let them take the six dollars per day, or the responsibility of raising it. I am willing to leave no law in existence regulating the pay, and to let the next members fix their own compensation.

"There was one more reason he assigned which had induced him to conform to the wishes of the people, and vote for the repeal of the law of the last session. This House, he said, was the only branch of the Government which seemed to have an analogy to the people; the only one which formed any counterpoise to the weight of the Executive and other branches; the only barrier against encroachments on the rights of the people, or of the States.

"It was impossible for this House so to act as to retain the confidence of the people, unless they obeyed the general will and showed a willingness to respect it. But, gentlemen had said, the alleged expressions of public opinion were mere newspaper slang, the work of newspaper editors, etc. But, said Mr. Hardin, he believed that was not a fact. He did most solemnly believe that it was the public sentiment. It might have been originally the work of demagogues, whose breath had raised one wave, which had produced another, until a storm had covered all the popular ocean. But, he said, he had no right to reason on the motives or causes of the excitement. A man

has no right, when the people are unanimous, to conclude that they are mistaken. He must either comply with their will or resign. For his part, he would not knowingly misrepresent the will of his constituents on this floor.

"Mr. Hardin said he did not agree with the gentleman from Virginia (Mr. Randolph), for whom he had always a very high respect, who said that he knew not how the gentlemen could vote for the repeal of the law without refunding what they had received under the law. Mr. Hardin said he had resolved this subject in his mind, and saw no difficulty in it. He had voted for the law because he believed it correct. He should vote to repeal it, not because he believed he had done wrong, but because of an anxiety to conform to public sentiment, particularly on a matter between a member and his constituents. But he would not consent to acknowledge that he had cheated the people out of their money, as he should do by voting to refund it.

"There was nothing dishonorable in keeping it. Besides, the power of Congress did not enable them to enforce such a law if they passed it. Was it possible for them to pass a valid law taking away from an individual money earned under a contract between him and the Government? Could they pass a law to take away from the Judges of the Supreme Court the salaries which they have received for years past? No. A salary may be destroyed prospectively, but you can not take away from a man what he has earned. You can not deprive a man by law of a vested right."

On the final vote as to repeal, one hundred and thirty-eight voted yea to twenty-seven nays. All the Kentucky Congressmen voted yea. On March 3d the Fourteenth Congress adjourned *sine die*. For the time Mr. Hardin retired from the cares and labors, the responsibilities and vexations, of official life. He had no cause, however, to review his career with dissatisfaction. He had achieved all that a reasonable ambition could have hoped. It was his misfortune, not his fault, that his action in regard to the compensation bill affected him unfavorably. He had but followed the lead of Colonel Richard M. Johnson, who was both before and after a favorite of fortune. Of all uncertain things nothing is more capricious than popular favor.

CHAPTER VIII.

THE COMPROMISE ERA.

IN 1818 the furor over the "compensation law" having subsided, Mr. Hardin was again a candidate for Congress. He had for his opponent the late Richard Rudd, a reputable lawyer of Bardstown. Mr. Rudd had influential connections throughout the district, and was himself of agreeable and popular manners. Stories are still related about Bardstown illustrating the generosity of his character. After a heated canvass Mr. Hardin was elected, succeeding Thomas Speed. The first session of the Sixteenth Congress began December 6, 1819. Mr. Clay was elected speaker by the flattering vote of one hundred and forty-seven to eight scattering.

Mr. Hardin did not take his seat until the 14th of the month. The standing committees having all been appointed before his arrival, his work in that direction was confined to special committees and promiscuous services in Committee of the Whole. He had for his colleagues from Kentucky Richard C. Anderson, Jr., William Brown, Alney McLean, Thomas Metcalfe, Tunstall Quarles, George Robertson, David Trimble, David Walker, and the speaker. In the Senate from Kentucky at that time were Richard M. Johnson and William Logan, the latter being succeeded in 1820 by Isham Talbott. Among the list of eminent senators at this period, Mr. Benton, in his "Thirty Years' View," names Colonel Johnson, and in the "array of distinguished talent in the House" after Mr. Clay he mentions Anderson, Trimble, Robertson, Hardin, and Metcalfe.

Richard Clough Anderson, Jr., was born at Louisville, August 4, 1788. His father (for whom he was named) was a gallant soldier of the Revolution. His mother was a sister of the celebrated General George Rogers Clark. He was educated in Virginia, graduated at William and Mary College, and studied law under Judge Tucker. He returned to Kentucky and began practice, soon attaining high rank. He served several years in the State Legislature. In 1817 he defeated Judge Stephen Ormsby for Congress, and in 1819 was re-elected. He was an amiable man and discreet politician. He was the brother of General Robert Anderson, of Fort Sumter fame, of ex-Governor

Charles Anderson, of Kentucky, and also of the late Larz Anderson, of Cincinnati.

William Brown was a native of Fauquier county, Virginia, whence he emigrated to Kentucky. This session witnessed his first entry into Congress, where he proved an active member.

General Thomas Metcalfe was also born in Fauquier county, Virginia, March 20, 1780. He was brought by his parents to Kentucky in 1785, settling first in Fayette county, but removing a few years afterward to Nicholas. His parents were poor and humble, who sent their son to school only long enough to acquire the English rudiments and a thirst for knowledge. At sixteen he was apprenticed to a stonemason. While learning his trade he devoted his leisure to study. At nineteen his father died, casting on him the burden of the family. He erected many important buildings in and out of the State, and among others in 1803 he worked on that stone court-house at Bardstown (still standing) whose walls have echoed the best forensic eloquence ever heard in the West. In 1809 he made his first public speech, calling for volunteers to fight the Spaniards. He obtained many volunteers, but the Spanish troubles ended peaceably, and they were not needed. At six consecutive elections he was chosen to represent Nicholas county in the State Legislature. He served in the war of 1812, and the company under his command distinguished itself for courage at the battle of Fort Meigs. In 1819 he was for the first time elected to Congress. He was an earnest and forcible public speaker, and from this and his trade the people delighted to call him "Old Stone-hammer."

This was the second term Aldney McLean had served with Hardin in Congress.

Tunstall Quarles had been long in public life. He was a member of the Kentucky Legislature from Woodford county as early as 1796, and from Pulaski in 1811 and 1812. He entered Congress in 1817 and was re-elected in 1819.

This was Judge George Robertson's second term of Congressional service.

David Trimble was born in Frederick county, Maryland, about 1782—educated at William and Mary college—studied law and emigrated to Kentucky about 1803. He represented Montgomery county in the Legislature, and afterward removed to Greenup. He was elected to Congress in 1817, and re-elected in 1819. He was a man of integrity—energetic and faithful.

David Walker had served the term preceding his election to the present Congress—being at that time the successful competitor of the celebrated Matthew Lyon.

The great and exciting question of this, as well as the previous session, was that of admitting Missouri as a State of the Union. Its admission was resisted by certain Northern Congressmen because its constitution recognized and protected slavery.

On the other hand, it was urged that Congress had no power to impose restrictions on a new State, further than to require its form of government to be Republican; and further contended that by the treaty of cession of the Louisiana territory from France to the United States, the citizens of that territory (of which Missouri was part), were guaranteed in their rights of property and personal rights, and that included in the former was the right to slaves. The debate on these questions was long, animated, and able. The speech delivered by Mr. Hardin in the course of the discussion, favoring admission (February 4, 1820), was one of the best presentations of that side of the question. He insisted that the opponents of the bill sailed under false colors—that the pretense that they acted from motives of humanity, morality, and religion was but a cloak to conceal the real design—political consequence and mastery. "On our side of the House," said he, "we are contending not for victory, but struggling for our political existence." He discussed the questions involved under three leading heads: First, had Congress the power under the Constitution of the United States to annex, as an irrevocable condition upon the admission of Missouri into the Union, that the State, when organized, should prohibit the further introduction of slaves within her limits, and emancipate the future increase of all those who might be holden in slavery at the time the State government was formed? Second, if Congress had the constitutional power, could it be exercised without violating the national faith under the treaty of cession from France? Thirdly, if Congress had the power to impose the restriction, and would not violate national faith in so doing, was the proposed restriction expedient? He refuted as absurd the idea advanced by some of the opponents of admission, that the declaration of independence of 1776 had emancipated all the slaves in the thirteen colonies. He denied that precedents were binding if in violation of the Constitution, and argued that the conditions annexed to the admission of the former new States were unauthorized, yet, being consented to by them, constituted no precedent. In answer to the

position that the treaty-making power could not limit the powers of Congress, he argued that the terms of cession of the Louisiana territory having been recognized by Congress, by paying the price of it to the French, the nation was bound by it.

In the course of his remarks he thus formulated his opinion on the nature of the government:

"I take this proposition to be undeniable; that were it not for the contract between the States, which is the Constitution of the United States, that the States would be completely sovereign to all intents and purposes, and that every power and attribute incidental to, or connected with, sovereignty would belong to the States. The proposition is equally incontrovertible that as the Government of the United States possessed no sovereignty originally, or even existence itself, and being composed entirely of delegated powers from the States, that it possesses none of the original attributes of sovereignty, and it can do nothing that it is not authorized to do by the Constitution, either by an express grant of power or by an implied grant as necessary to carry into effect some power already given."

Some member had claimed authority for the obnoxious restriction, under that provision of the Constitution which authorized Congress to provide for the general welfare. Mr. Hardin thus replied:

"Mr. Chairman, I am heartily tired with the continued and repeated claims of this General Welfare. When he was but a youth we made him considerable presents from time to time at the expense of State rights. When he grew to be a man we provided him a handsome marriage portion by giving him a bank of thirty-five millions.* He is a great favorite, for even the judiciary, who by law is to have no sympathies, has taken him under its special care and keeping. It is time we should resist his claims and stop him in his high career of universal dominion. In examining, sir, his pretensions, for he is like most of our generals in the commencement of the late war—we find him only brave, formidable, and dangerous on paper."

To those who contended that the proposed restriction was authorized under the "necessary powers" of Congress, he thus responded:

"This doctrine, that Congress can enact any law which it may deem needful and necessary for the health and prosperity of the general government is a most dangerous one, and, if persisted in, must lead to the complete consolidation of this Government. All men in power are grasping after more, and by every means in their reach endeavoring to extend it—proclaiming to the world that power in their hands is harmless, as it respects the rights of their fellowmen. It is time, sir, that this plea of necessity for the extension of power should be disregarded. I would ask you, Mr. Chairman, to cast your eyes back upon the nations of the world, both ancient and

*Referring to the United States Bank chartered in 1816.

modern, from the formation of the first government under Nimrod, the mighty hunter, to the present day, and tell me, has not every encroachment upon the civil, political, and religious rights of the people been justified or apologized for under this same plea—necessity? The ministers of Great Britain plead necessity for the present system of taxation, which now bows down to the earth with the heaviest load of oppression the people of that country. Bonaparte pleaded necessity for his conscriptions. Even the Sultan of Turkey, when he takes off the head of one of his subjects, pleads necessity. I do assure you, Mr. Chairman, that civilly, morally, politically, and religiously a greater tyrant never existed than this same *necessity*."

In considering the constitutional provision that Congress may admit "new States," Mr. Hardin thus expressed himself as to the meaning of the term "State:"

"The import of the word State, when used by the Constitution, means a political association of the people, with just the same sovereignty, and no more or less, than is severally possessed by the thirteen old States. For, if you give it less than the same rights of self-government, it is neither a State in the common acceptation of the word as defined by the laws of nations, or of the constitutional meaning of the term. You may call it a territory, province, colony, or any other kind of excrescent appendage to the general government, or, you may term it a nondescript, but I protest against it being called a State. If Congress can call upon Missouri for a surrender of any portion of her rights, which are retained by the other States, where is it to stop? to what lengths can it go? Congress may, in the next place, demand of her, or any other candidate for admission, to yield command of the State militia, to give up the independence of the judiciary—to surrender all the great rights of State government. * * * * *

"I have now, Mr. Chairman, gone through the first two great divisions of this subject in the order I proposed to investigate them. Perhaps I have been somewhat tedious, but I could not well say less. Sir, the manner in which this nation seems divided upon this subject convinces me of one thing that I have long suspected to be true, that our opinions, upon all that variety of subjects upon which we, in the course of our lives, are called upon to decide, are the result of affections and passions, and that judgment has no concern therein. Upon this occasion, we see this opinion fully illustrated; because men, distinguished both for integrity and talents, are to be found on each side; and the line that divides the parties is a local one. But, sir, the unwillingness manifested by the opposite side of the House to adjust and settle this dispute, and prevent an explosion that must shake the American world to its center, induces me to believe that their judgments are warped by a passion, in this case, which may be denominated an insatiable thirst after power—an unwarrantable lust of dominion."

Mr. Hardin suggested a mode of settling the controversy, which some three weeks later was adopted and became, in fact, the famous Missouri Compromise:

"It strikes me, Mr. Chairman, that this matter can be settled with great facility, if each party be so disposed, and neither give up any point in this question which may be called principle. Can it not be done by permitting Missouri to go into the Union without the restriction, and then draw a line from the western boundary of the proposed State of Missouri due west to the Pacific—north of the line prohibiting slavery, and south permitting it?"

Mr. Clay's biographers have placed his early claim for statesmanship largely on his settlement of the Missouri question. He undoubtedly did his country a great service in that affair. In adjusting the equities of fame, however, it should not be overlooked that Mr. Hardin had already suggested the plan, which only awaited execution. Earnestly and forcibly, in concluding his speech, did Mr. Hardin urge the adoption of his proposed plan of settlement.

"I have but few words more, Mr. Chairman, and then I am done. I call upon the gentlemen from both sides of this House to tell me what is to be the consequence if this question be not settled in some way this session? I may be asked, how is that to be done? I answer, by a compromise, and in no other way. Can either party be so vain as to expect a victory? Behold! and see how this nation is divided—eleven States against eleven; a small majority in this House in favor of the amendment, a small one in the Senate against it, and the Cabinet perhaps not unanimous. In this state of public sentiment the bill falls, and Missouri is not permitted to become a member of the Union. Her claims are just and well founded, but we have refused to recognize them, and turn a deaf ear to her petitions from time to time; not only that, but manifest a strong disposition not even to allow her citizens the rights of self-government, the birthright of all Americans.

"The flame of '76 may burst out. They call a convention, form a constitution agreeably to their own ideas of the best practicable mode of obtaining happiness. They disclaim their territorial vassalage, and set up for themselves. Are we to drive them to submission at the point of the bayonet, because, being citizens of the United States, they claim the high destinies of free-born men? If the bayonet is the policy, who will wield it? Not the Southern, Western, or Middle States; for the hearts of their people are with them; and, ten chances to one, if arms, the last argument of nations, are resorted to, they will assist and aid them. This dispute is like no other that ever came into this House, that was ever before the legislative body of this nation. Party spirit, I know, has at times run high, but the great danger from this question, as it relates to the safety and integrity of the Union,

is this, that it is not the same State divided into parties; it is not the States in the same section of the Union divided against each other. It is the North and East against the South and West. It is a great geographical line that separates the contending parties. And those parties, when so equally divided, shake mighty empires to their center, and break up the foundations of the great deep, that sooner or later, if not settled, will rend in twain this temple of liberty from the top to the bottom. My friends reply to me and say, how can you compromise? how can you surrender principle? It strikes me, Mr. Chairman, that this matter can be settled with great facility, if each party be so disposed, and neither give up any point in this question which may be called principle. Can it not be done by permitting Missouri to go into the Union without the restriction, and then draw a line from the western boundary of the proposed State of Missouri, due West, to the Pacific? North of the line prohibit slavery, and South admit it.

"The principle we contend for is, first, that Congress can not demand a surrender of any sovereignty from a new State which is retained by the old States. In the proposed compromise this principle will not be violated. Next, we say that the faith of the nation is pledged to the people of that territory. Neither will this principle be given up, for the territory upon which the compromise, as contemplated, is intended to operate, is a wilderness, no inhabitants, citizens of the United States, living thereon. As it respects the gentlemen who are in favor of the present proposed restriction, it is no sacrifice of principle if they, finding they can not gain all they contend for, are content with partial success. I beg them to beware of one thing, as they love and revere this Union, not to push matters to extremities; for, although they may have a majority on this floor, we will never submit at discretion. I call on them to recollect the old proverb, "Beware of the desperation of a peaceable man." No, Mr. Chairman, sooner than be delivered over, not to our brethren, either in politics or affection, but to a federal party in the North, bound hand and foot, and to have no voice, no lot, no part, in this Union, we will burst all the ties and bonds that unite us together and stand erect in our own majesty, as did that mighty man of old, when Delilah said: 'The Philistines be upon thee, Sampson.' I do, therefore, Mr. Chairman, conjure the gentlemen from every part of the House, for and on behalf of this Union, its integrity and indivisibility, not to allow party rancor and animosity to arrest it in its rapid march to a point of national felicity, glory, and prosperity never known, either in the old or new world. Let neither side any longer contend for victory; for should either party succeed, and finally triumph, the pride of victory on one hand, and the mortification and humiliation of defeat on the other, will widen the breach and prevent a cordial reconciliation. Before this contest is pushed to extremities, let us meet each other on this floor half way, and embrace as brothers, bury the tomakawk of party warfare, and smoke the pipe of peace."

Mr. Anderson delivered a speech on the Missouri question, February 11th, and excepting him, Clay, and Hardin, no other member from Kentucky took part in the debate. On the 22d Mr. Clay proposed a committee of twenty-three to act jointly with a committee of the Senate to consider and report what provision should be adopted in regard to Missouri. That committee formulated Mr. Hardin's suggestion, which was adopted by both Houses, thus for a time restoring political peace to a distracted country.

On March 1st Mr. Quarles announced to the House that on that morning Major David Walker, of Kentucky, "had exchanged a world of cares, of toils and difficulties, for a mansion of bliss," and he thereupon offered resolutions that he be buried without pomp or parade, and that the House should not adjourn, such being the request of the dying Congressman. Mr. Randolph arose, and after some preliminary observations offered his views as to the duty of Congress with respect to the funerals of its deceased members and others in public office. In the course of his remarks he made some interesting statements. They are given here, not because pertinent to this narrative, though quite as relevant as they were in the House on the occasion of their delivery, but rather to illustrate the discursive style of speech-making in Mr. Hardin's earlier career. Mr. Randolph spoke as follows:

"The first death which took place of a member of this House—and I ought well to remember it, for it was one of my nearest relations, the only near one left on the maternal side—took place in New York in the month of June, 1790, when Congress sat in that city. The House resolved that the delegation of Virginia then present (consisting, when full, of only ten members) should be a committee to see performed the last sad offices for the deceased. The next day they 'resolved unanimously that the members of this House, from a sincere desire of showing every mark of respect due to the memory of Theodorick Bland, deceased, late a member thereof, will go in mourning for him one month, by the usual mode of wearing crape on the left arm.' As the member in question was, if not in affluent, yet in independent, circumstances, it was ordered that a sum equal to his traveling expenses, had he lived to return to Virginia, should be allowed for the expense of removing him to his last sad home in this world. I mean, sir, the traveling allowance was viewed as a fund to which the deceased member's executors might be entitled, and therefore applicable, under the direction of his colleagues, to the rites of sepulture. His executors might, if they pleased, have removed the body to the family burial-ground. The funeral was neither pompous nor expensive. It was what it ought to have been—

decent Christian burial. Other cases had occurred, Mr. Randolph continued, which he remembered in Philadelphia—two particularly, of members from North Carolina. On those occasions a particular friend of his, who had been a member of Congress from the time of the adoption of the constitution by North Carolina, was appointed on the committee to make the necessary arrangements for interment, in the case of Mr. Burgess, of Edenton, he believed, and in that of Mr. Bryan, of Newbern, he was sure, in conjunction with a colleague of his (Mr. Thomas Blount), since also gone where all flesh must go. On that occasion this rule was also observed.

"During the first session of Congress here (the last of Mr. Adams' administration), this House lost one of its most valuable members, in the person of a gentleman from Georgia (Mr. Jones). In this case the rule was still adhered to. But at a succeeding session—the first under the new administration, and the only bad example set at that time, Mr. Randolph regretted it the more, as he felt his full share of the responsibility incurred at that time —on the death of the delegate from the Territory of Mississippi (Mr. Hunter), the rule was departed from; then, for the first time, was the practice adopted of providing a funeral at the public expense, be that expense what it might; and that rule, under which gross abuses have been practiced, has continued ever since to be observed, or rather to be abused; and this without any change in the accustomed form of attending the funeral and wearing crape for a month. Why not, then, in this case, said Mr. Randolph, comply with the letter and spirit of the request of the deceased, without departing from the established form, and yet get back, if I may so express myself, to first principles on this melancholy occasion? Mr. Randolph adverted to a funeral of a former Vice-President. To what man does the cause of American Independence owe more, with one single exception, than to George Clinton? None; none, sir. If any man's remains might claim a funeral at the public expense, surely it is those of him* whose death bathed a nation in tears. Next to that man, or near as any, in the cause of the Revolution, stood George Clinton. But a funeral at the public expense ought to be considered as the highest public honor which the nation can bestow. Ought it, then, to be considered a matter of course that whenever a member of Congress, or a Territorial Delegate, or a Vice-President, or even a President of the United States shall leave this bustling, sorry world, we shall follow him (perhaps nothing loth) to the grave, and the sumptuous funeral be defrayed at the public charge? It was not the money price of which he spoke. Recollect the case of the late William Pitt. What was the distinction taken on that occasion? And by whom was a public funeral of that great statesman, who for more than twenty years had filled the first place in the eyes of Europe, opposed? By a man who I may call, and will call, ultimus Anglorum—by William Windham; by the favorite disciple of Edmund Burke, the fourth, but not the least, star in the great constellation of English statesmen that is set for-

*Washington.

ever. It was this—he would pay the debts of this eminent man; his great and disinterested public services deserved it at the hands of the nation; but he would give no unsuccessful statesman, and such he considered Mr. Pitt to have been, a funeral at the public expense. Mr. Randolph hoped the House would, in the present case, go on in the usual course; and that while it complied with the established form, it would, at the same time, comply in such a manner as to fulfill the letter and spirit of the request of the deceased."

A bill was before Congress at this session to extend the charters of the banks in the District of Columbia. A majority of the Kentucky delegation opposed the measure. Mr. Hardin advocated it in some brief remarks. It will be observed that his action was not only consistent with his previous opposition to the Bank of the United States, but in fact grew out of it. The following is an extract from his speech on the subject:

"This motion for postponement was, in fact, nothing but a left-handed way of defeating this bill. The consequence of its success would be oppression and ruin on a large portion of the people, and inordinate speculations would be made, on the other hand, by those who were not willing to give their names to the gentleman from Georgia (Mr. Cobb). Men may be able to pay what they owe by selling their property; but when all are sellers, and none are buyers, property must be sacrificed at least fifty per cent. below its value; and, in a few years, instead of this city looking like an assemblage of ruins, as one gentleman has said of it, we shall hardly be able to find where it is. Mr. Hardin said he had not long been acquainted with the city, but since he had known it, it had greatly improved, and he hoped before long to see as splendid a city as the capital of a commercial and agricultural and—as the gentleman from Pennsylvania (Mr. Baldwin) would have it—manufacturing country, ought to be. If this were a question, in the first instance, whether these banks should be chartered, he should vote against it. If it were a question whether a bank should be chartered within the United States, he should vote against it. But that was not the question. These banks have been chartered, some of them twenty years; the commerce and the business of the District is predicated on this amount of bank capital. If it were abolished, ruin must follow. This capital was not, he said, confined to the District, but extended its benefits to the neighboring counties of Virginia and Maryland. Capital, he said further, would regulate itself; and no apprehension need be entertained that more capital would be employed in banking than could be profitably employed. Again, Mr. Hardin said he was in favor of rechartering these banks for a political consideration. He had been opposed to chartering the Bank of the United States; he thought it too great an engine of power—a great mammoth, which, at some day or other, would trample under foot the liberties of the country.

As long as this was in operation, he would keep in being these banks—which Congress had undoubted power to do—within the District of Columbia; and, as long as they continued specie payments, they would form a sort of counter current to the overwhelming influence of the Bank of the United States. Let every other bank in the country be destroyed and we are bound hand and foot at the altar of this stupendous institution. There was in the charter of the Bank of the United States, he said, a clause providing that Congress should not, during its existence, incorporate any new bank. Let these banks, then, said Mr. Hardin, go out of existence, and the power of counteracting, in any degree, the influence of the Bank of the United States has passed out of your hands forever."

May 15th, the first session of the Sixteenth Congress adjourned. The second session convened Monday, November 13th, following. Mr. Clay, in a letter to the clerk of the House, resigned the speakership. John W. Taylor, of New York, was chosen speaker, on Wednesday, the 15th, on the twenty-second ballot, defeating William Lowndes, of South Carolina, and Samuel Smith, of Maryland. Mr. Quarles, of Kentucky, had resigned in vacation, and Judge Thomas Montgomery had been chosen in his stead. Francis Johnson came in room of David Walker, deceased.

Thomas Montgomery was a lawyer by profession, born in Nelson county, Virginia, and had been a member of the State Legislature, from Lincoln county, in 1811. He was first in Congress in 1813, serving one session. He was not again in public life until elected for the unexpired term of Mr. Quarles. Francis Johnson was a native of Caroline county, Virginia, but, in early life, removed to Kentucky, where he became an eminent lawyer. He had represented Warren county in the Kentucky Legislature for three sessions, and the Senatorial district one term, and entered Congress now for the first time. He proved himself an active, vigilant, and efficient member.

Mr. Hardin did not reach Washington until December 7th. He immediately threw himself into the work of the session, and proved an active and influential member. He performed a great amount of important committee work, and no member from Kentucky (save Mr. Clay) more frequently took part in debate. Yet, of the many speeches he made, not one is preserved. At this session, the Missouri question was again discussed. Mr. Brown, of Kentucky, made an elaborate speech in favor of repealing the restriction against slavery in the Territories embraced in the compromise of the preceding session. Other Kentucky congressmen (except Mr. Clay) contented themselves

with silently voting whenever the subject arose. Nothing better illustrates the placidity of the session than the zeal and energy manifested by Mr. Clay to obtain sympathetic expressions in favor of the South American republics and the adoption of resolutions asking the President to send a minister thither. Congress, with great unanimity, expressed its participation with the people of the United States in the deep interest they felt for the success of the Spanish provinces in their struggle for liberty. Judge Montgomery was the only one of the Kentucky delegation who voted nay, because he did not believe, as he said, that his constituents took any interest in the subject. The question of sending a minister to the "patriot" governments was decided negatively, yet a resolution was adopted to the effect that Congress would support the President in their recognition. Against this resolution Messrs. Hardin, Montgomery, and Robertson voted in opposition to their colleagues.

CHAPTER IX.

A POLITICAL CALM.

THE high position Mr. Hardin had maintained during his official service in Congress, the arduous and important duties he had performed, and the entire fulfillment of the trust reposed in the representative by the constituent caused a feeling of pardonable pride on his part in the retrospect of his career. Forgetting that republics are ungrateful, he deluded himself with the hope of meeting, at home, an approving constituency. He was of the majority party (so far as party lines were defined), and faithful service had been accustomed to the reward of re-election as of course. His pleasant anticipations, however, had a rude shock. The brilliant John Hayes, of Bardstown, then in the full meridian of his remarkable powers, was a candidate for his seat, and had already made a thorough canvass of the district.

A hasty survey of the condition of affairs convinced Mr. Hardin that his re-election would cost a struggle. The magnetism of Hayes, and his indescribable, persuasive eloquence had drawn the people to him in such a way that they were unwilling to give audience to an opponent. Still further adding to Mr. Hardin's embarrassment, Hayes declined a joint canvass, alleging his lack of sufficient money to defray his expenses. To canvass the district alone was an unpromising task. Mr. Hardin's oratory might have been justly compared to that of a fixed star, emitting a uniform and steady light, but that of Hayes had a cometary brilliance that paled the glory of all the constellations. While this was true, Mr. Hardin felt that, in debate, he would, at least, be on equal terms; but the trouble was to obtain meetings for such a purpose. In this dilemma, Hardin suggested to his opponent that he had just arrived from Washington with a great part of his salary, and that he would willingly lend him money for his expenses. This offer was accepted, and a joint canvass begun. The comets out-dazzle the stellar world, yet their glory is ephemeral, while the fixed stars shine on through the ages. Hayes' brilliant periods and eloquent sentiments, when unchallenged, were omnipotent with the people. But, when they gathered again to hear and be

charmed, they found their idol confronted by the master of all the arts of debate. In the use of logic, invective, wit, humor, and ridicule, the eloquent Hayes was sadly overmatched. In the daily debates of the canvass, he rapidly lost the advantage he had won. Either from disappointment or chagrin, or because of his ungovernable passion for drink, he had gained for himself, by the end of the canvass, the reputation of hopeless, helpless sottishness. The result was the easy re-election of Mr. Hardin.

Mr. Hardin has been criticised for his course toward Hayes at this time. The charge has been made by the admirers of Hayes that the joint canvass was a mere device, and that the money was furnished with foreknowledge that he would weakly use it to disgrace himself. This charge is gratuitous, and, like a sword without a guard, dangerous to him who uses it. If Hayes was so helpless in the presence of his constituency, with every incentive to abstinence and self-control, with a little money, what would he have become with the license of the national capital and a per diem adequate to the wildest dissipation?

Monday, December 3, 1821, began the first session of the Seventeenth Congress. A quorum was present and Mr. Hardin was in his seat. The first question was the election of a speaker.

On the first ballot ex-speaker J. W. Taylor, of New York, received sixty votes, Cæsar A. Rodney, of Delaware, forty-five, Louis McLane, also of Delaware, twenty-nine votes, and Samuel Smith, of Maryland, twenty, while seven votes were scattering. During the seven ballots taken the first day, the highest vote received by Mr. Taylor was seventy-seven, and that by Mr. Rodney seventy-two, and the others less. On the day following the balloting was resumed—the same persons being voted for, except that the name of Mr. McLane was withdrawn and that of Philip P. Barbour, of Virginia, was added to the list. On the twelfth ballot, Mr. Barbour received eighty-eight votes to sixty-seven for Mr. Taylor, and eighty-eight being one more than necessary to a choice, Mr. Barbour was declared elected. The new speaker had been in Congress continuously from 1814, and was a member of a distinguished family—one of the oldest and most respected in Virginia—to which Mr. Hardin was allied by marriage. When quite a young man he had emigrated to Kentucky and begun practicing law, but shortly returned to his native State. His talents were of a high order—solid, however, rather than showy. He was studious, earnest, candid, laborious, and patient, and in other ways eminently qualified to adorn the speaker's chair.

While thus accomplished, a story is repeated about him showing that he was more distinguished for talents than for piety His son, a young physician, in this respect was in marked contrast, being devotedly pious. He had located in another State, where, not long afterward, he was married. Writing to his parents, announcing that event, he eulogized his young wife as "a person of great piety." Judge Barbour, reading the letter, mistook the word "piety." "Well, Tom has married a woman of great property," said he to his wife. But Mrs. Barbour, on reading the letter, replied that it said nothing about property.

"Oh, yes," rejoined the judge, "he says his wife is a 'person of great property.'"

"That word is 'great piety,' not 'great property.'"

"Piety! piety!" said the judge, "d—n the piety."

Among the famous names that graced this Congress may be mentioned C. C. Camberling, of New York, James Buchanan and John Sergeant, of Pennsylvania, Andrew Stevenson and John Randolph, of Virginia, and George McDuffie, of South Carolina.

Of the Kentucky delegation, the following members of the Sixteenth Congress were returned: Messrs. Metcalfe, Montgomery, Francis Johnson, and Trimble. The new members were Messrs. Breckinridge, J. T. Johnson, New, Smith, and Woodson.

James D. Breckinridge, of Louisville, had served in the State Legislature in 1809–10–11, and was prominent as a lawyer. The present was his first term in Congress.

Major John T. Johnson was a lawyer by profession, a native of Scott county, and a younger brother of Colonel Richard M. Johnson. He had seen service in the war of 1812, was subsequently a member of the Legislature, and with the present session entered upon his congressional career.

Anthony New succeeded Alney McLean. He had served two former sessions—1811–13 and 1817–19. He attended the sessions of Congress, though the reported proceedings do not disclose the part he took. He was an early settler of that territory now embraced in Todd county; was a member of the Baptist church, and prominent in denominational affairs. In a letter dated at Shawneetown, July 7, 1827, addressed to Governor Ninian Edwards, the writer, General Joseph M. Street, thus refers to a speech by Mr. New at Princeton, he being at the time a candidate for Congress against Chittenden Lyon and John F. Henry: "New's speech was the declamation of a handsome, agree-

able man, of common capacity, agreeably delivered, and was pleasing to many, but there was, in fact, nothing in it—it was entirely a dish of elegant flummery, suited tolerably well to the occasion."

At that time New was an Adams or administration man, and was defeated by Lyon.

Colonel John Speed Smith was born in Kentucky the year it became a State. He became a lawyer, settled in Richmond, and rapidly rose to prominence. In 1817 he was awhile a candidate for Congress, but withdrew. In 1819 he was again a candidate to succeed George Robertson. "On reaching home," said Judge Robertson, referring to this period, "I found John Speed Smith a candidate for my seat; and, although I did not desire a re-election and had so announced, yet unwilling to be apparently shoved out, I felt it due to honor to become a candidate again. But after canvassing the district a few days Smith declined." He was, however, chosen to the State Legislature at the succeeding election.* He was first elected to Congress in 1821. His career indicates great energy and force of character.

Samuel Woodson was clerk of the courts in Jessamine county at one time.† Mr. Hardin once referred to meeting him at Richmond in 1805, where he was practicing as a circuit lawyer. He represented Jessamine county in the legislative session of 1819. The same year he was Grand Master of the Masonic fraternity of Kentucky, succeeding Mr. Clay in that position, and also occupying the latter's seat in the Seventeenth Congress.

The Kentucky delegation were placed on standing committees as follows:

Elections—Mr. Smith. Claims—Mr. Metcalfe. Post-office and Post-roads—Francis Johnson. Agriculture—Mr. New. Public Expenditures—Mr. Montgomery. Manufactures—Mr. Woodson.

Only six of the ten members were thus honored, and Mr. Hardin was not of the six. Although diligent, painstaking, and laborious, he delighted in the privileges of a free lance. While a member of the majority party in Congress, he had a natural predilection to battle on the side of the minority and sympathize with the opposition. He resented party domination with much the same spirit that the old-time Kentucky militiaman rebelled against military discipline. But before the session was over Mr. Hardin was placed on various select committees, that on Retrenchment being the most important. So

* Mr. Collins is mistaken in saying that this was while Martin Hardin lived at Richmond. Mr. Hardin had removed to Frankfort before Mr. Smith came to the bar.

† As late as 1814 Amos Kendall speaks of his holding that office.

far as shown by the reported proceedings, no member took a more active part, or spoke more frequently. No member from his own State approximated the amount of labor he performed. Reports of his speeches and informal remarks on the many questions presented are exceedingly meager, and do but scant justice to the substance of what he said. His pithy style and tone are almost wholly lost. There were but few of the more important questions that arose on which he was not heard. Among these, the question of apportionment of congressional representation among the States has as much, or more, interest to the modern reader than any other.

The fourth census having been made in 1820, the questions of every decade recurred in the Seventeenth Congress. (1) Of how many members shall the House of Representatives consist? (2) Shall the ratio of representation be increased or diminished? On these questions the inclination was for the representatives of the smaller States to be arrayed against those of the larger. The former objected to a diminution of their numbers, and they were prolific in illogical arguments to maintain their position. To prevent diminution, the only alternative was an increase in the number of representatives. The increase, it was said, would lessen the dangerous influence of executive patronage. The larger the body to be bribed, the less danger of bribery. Besides, the increase of population demanded an increase of representation, in order that the representative might be familiar with the interest of his constituent—difficult, or impossible, in a numerous constituency.

Propositions to fix the ratio of representation varied between thirty-five thousand and seventy-five thousand. The larger States, for the most part, favored a large number. They replied that the relative representation of the small States was the same—whether the ratio was small or great. It was also argued that too large a body would be cumbrous, too expensive, and that, in fact, the hall of the House would not hold a large increase on the existing number. These are samples of the arguments pro and con.

Mr. Hardin addressed the House on the apportionment bill to the following effect:

"Mr. Hardin said there were some features in our Government of a national and others of a confederated character. Of the former class was the operation of the public laws; of the latter was the election of the Senate. It has been a matter of some question to which class belonged the election of the representation of this House. He was inclined to believe it appertained

to the latter, and the more especially as he found it coupled in the Constitution with the subject of apportioning direct taxation among the States, which was undoubtedly of the latter description. Indeed, he considered the question to have been decided as long ago as 1792, for which he referred to the journal of the House, and read from that journal President Washington's message, as follows:

"'UNITED STATES, April 5, 1792.

"'*Gentlemen of the House of Representatives:*

"'I have maturely considered the act passed by the two Houses entitled "An act for the apportionment of representatives among the several States, according to the first enumeration," and I return it to your House, wherein it originated, with the following objections:

"'First: The Constitution has prescribed that representatives shall be apportioned among the several States according to their respective numbers, and there is no one proportion or divisor which applied to the respective numbers of the States will yield the number and allotment of representatives proposed by the bill.

"'Second: The Constitution has also provided that the number of representatives shall not exceed one for every thirty thousand, which restriction is, by the context, and by fair and obvious construction, to be applied to the separate and respective numbers of the States, and the bill has allotted to eight of the States more than one for every thirty thousand.

"'G. WASHINGTON."

"Mr. Hardin remarked that the practice of the Government had ever since corresponded with that decision. So much for the observations of the gentleman from Massachusetts (Mr. Reed). In apportioning representation, gentlemen had expressed great diversity of opinion. He would agree that the representation ought to be sufficiently large to bring into the House the wishes, the feelings, and the interests of the people, and at the same time to give it sufficient weight and authority to check and counterpoise any overbearing influence of the other branch of the Government.

"Yet there were rules of convenience and inconvenience that ought not to be overlooked. There was daily a practical lesson that there were members enough in this House to give information of the interests and concerns of the various parts of the Union. He did not wish that the number should be so increased as to become unwieldy and unmanageable. When that was the case the public business was necessarily protracted, and even the item of expense was not to be overlooked. But he thought some convenient number—between one hundred and eighty and two hundred and twenty—would be proper, and he was not very solicitous respecting the precise limit if those extremes were not passed.

"One argument, on which much reliance seemed to have been placed, was that a large number would fill the House in such a manner that the corrupt stream of executive influence could not flow into it, and that the numbers in the House should be so great that to corrupt a majority would more

than exhaust the means of the executive. For his part, he should be very happy to be assured there was no corrupt stream flowing out of it. But he did not wish to legislate on that principle. He was unwilling to allow force to any argument that was predicated on the position that the members of that body were such villains as to be capable of being corrupted; and the resolutions that had both formerly and recently been introduced in the House, purporting to guard against such influence by rendering members incapable of holding offices until a period of probation after their Congressional term had elapsed, had never received his sanction or his vote. Nor did he feel alarmed by the apprehensions that seemed to afflict the gentleman from Pennsylvania (Mr. Baldwin) that it was necessary to fix the ratio low, so that each State might have two members in the House of Representatives, because, if ever Congress should be called on to elect a President, it would render it more difficult for the candidates for that office to buy up the representation from the small States. If a man will go into a graveyard to see spirits, he can always discern them.

"There is no difficulty in conjuring up imaginary dangers where many in reality exist. It is sometimes a very convenient way of reasoning to carry a point; for he (Mr. Hardin) had known the period when, if it was desired to keep up a standing army, an alarm could be sounded of invasion by the Emperor of Russia from beyond the Cape of Good Hope. The House had heard much exposition of late on the subject of first principles; but it was somewhat remarkable that they were always exactly suited to the interests of that State whose member urged them. But there was much sympathy and feeling for the magnanimous State of Rhode Island, and a gentleman from Massachusetts (Mr. Baylies) yesterday informed us that that State paid one-fifth of the commercial revenue to the United States. He (Mr. Hardin) had always understood, however, and he believed it was pretty generally understood, that duties on imports were paid by consumers. And would it be pretended that the State of Rhode Island consumed one-fifth of these imported articles? If so, they must wear very fine coats, and drink tea and coffee most prodigiously! The smaller States should recollect that they have an equal power in the Senate, and that this was a concession in their favor by the larger States, when the Constitution was formed, in the spirit of compromise. They could certainly have but little to complain of to be represented according to numbers in this House, if in a co-ordinate branch of the Government, a State of eighty-three thousand inhabitants has an equal vote with a State having one million three hundred thousand. By lowering the ratio you add nothing to the weight of representation from the larger States. Power is comparative; if all were Sampsons no one would be distinguished for strength. If all were wealthy, there would be no rich men. And if all were orators of the first class, the great orator of Baltimore would not be spoken of. He (Mr. Hardin) would be glad to accommodate the State of

Rhode Island, but he would not consent to do it at the expense of filling the House with an inconvenient number, and the old States should remember that their population will probably remain nearly stationary for the next ten years. Yet the new States may perhaps increase some, at least fourfold, before the next census, and they will be bound to abide until that time by the apportionment which shall now be made."

The bill fixing forty thousand as the ratio of representation was adopted. The Kentucky delegation divided. For the bill were Messrs. Breckinridge, Hardin, J. T. Johnson, and Smith; against, Messrs. F. Johnson, Metcalfe, and Woodson.

The first session of the Seventeenth Congress adjourned May 8th, and the second session convened December 2, 1822. All the members were present the first day of the latter session save Mr. Smith, who arrived the following day. Mr. Hardin was placed on the standing committee on commerce. Other members of the delegation were assigned to standing committees as follows:

Post-offices, etc., Mr. F. Johnson; Public Expenditures, Mr. Woodson; Agriculture, Mr. New; Indian Affairs, Mr. Metcalfe; Foreign Affairs, Mr. Trimble; Military Affairs, Mr. Smith.

During this session Mr. Hardin spoke against the bill confirming claims to lots in Peoria; against the bill to incorporate the Naval Fraternal Association; in favor of the bill establishing a road from the mouth of the Miami on Lake Erie to the Connecticut Reserve; and also in favor of the resolution of inquiry as to who had suppressed parts of a letter accompanying the report of the Secretary of the Treasury. In the course of the debate on the bill to incorporate the United States Naval Fraternal Association for the relief of the families of deceased officers, Mr. Hardin expressed some interesting views on the subject of corporations, which have lost none of their force by lapse of time:

"It had always struck him, Mr. Hardin said, that a corporation could not have any corporate rights out of the limits of the authority of the government that incorporates it. That was a point, however, which he would not press at present. But suppose this bill be constitutional, would it be expedient to pass it? The creation of corporations in any well-organized government ought to be avoided as long as possible. They are separate and distinct from the great body of the people. They are, if he might use the expression, like a counter-current in the great stream of legislation, and the multiplication of these counter-currents might in time prevent the great stream itself from flowing on.

"His own impression had been that the United States ought to avoid creating corporations of any description. The ground on which the constitutionality of the Bank of the United States had been sustained by the Supreme Court was, that it was necessary to enable the Government to collect and disburse the revenue. Had it not been for that, Mr. Hardin said, the Bank of the United States would have been declared unconstitutional by the Supreme Court. Now, he asked, was the association proposed to be incorporated by this bill necessary to the general welfare, or to carry into effect any of the delegated powers of Congress? Not so, Mr. Hardin said.

"But is it not, he asked, a dangerous principle to incorporate either the army or the navy, or any portion of them? They are formidable bodies, to whom it would be dangerous, and, of course, inexpedient, to give corporate powers. Supposing the bill to embrace the seamen as well as the officers; it would be but to extend the principle of the bill a little further than it goes now. What government has ever done such a thing as it was now asked of this Government to do? No one; nor did he know that such a thing had ever been even proposed in any other country."

The bill was defeated.

In concluding this notice of the Seventeenth Congress, brief reference will be made to the subsequent career of three of his colleagues, who are to be named no more in these pages.

Francis Johnson continued in the Lower House of Congress until 1827. He, with Mr. Clay, opposed the election of General Jackson in 1824. He was principal counsel for defense in the celebrated trial of John U. Waring, for murder of Richardson, at Frankfort, in 1838 or 1839.

Judge Thomas Montgomery closed his congressional career with the present session, and resumed the practice of his profession, of which he was an able member. He was afterward appointed circuit judge, in the Stanford district, and died in office, April 2, 1828.

David Trimble continued in Congress until 1827. After that, he engaged in agriculture and manufactures—in the latter extensively—contributing largely to their development in the State. He died at Trimble's Furnace, Ky., October 26, 1842.

Mr. Hardin, in the Constitutional Convention of 1849, thus alluded to him: Hardin was opposing a proposition to make the private property of all stockholders in corporations liable for corporate debts. He said it would interdict corporations in the State. The proposition, he said, is nearly as broad as that of David Trimble, when he offered a resolution in Congress. "He (Trimble) said he would take the world for his theater; that heaven should contribute to his speech;

the sun, the moon, and stars as his quarry, and with the indulgence of the House he would take a whack at eternity." Mr. Hardin insisted that the obnoxious proposition was the broadest whack at eternity he ever saw.

The labors of the session, taking them all in all, were neither exciting nor of great importance; but they were extended to the constitutional limit of time, and there—March 3, 1823—they ended.

Mr. Hardin was succeeded by his kinsman, Charles A. Wickliffe. He did not seek re-election. Why he did not, he afterward thus explained, in a general way: "I had the misfortune," said he, "and I rather consider it so than otherwise, from time to time to have had a seat in Congress; and I found I could not stand the sacrifice longer than for two or four years at a time. Then I had to quit and resort again to the practice of the law to repair the loss."

CHAPTER X.

RELIEF AND ANTI-RELIEF.

NEITHER the auspicious termination of the war of 1812 nor the ensuing tranquillity of national affairs proved unmixed blessings to Kentucky. Hard times, very hard times, befell the growing young commonwealth. Western trade was yet in embryo. Labor was in slight demand, and poorly rewarded. Commodities of all kinds were cheap. Markets were distant and difficult of access, and but little money circulated.

In 1807, the first bank in the State, the Bank of Kentucky, had been established. In 1816, the United States Bank had been chartered (against which Mr. Hardin, as a member of Congress, had both spoken and voted). It established branches at Lexington and Louisville. Shippers of produce to New Orleans brought its proceeds home partly in molasses, sugar, and coffee, and partly in Spanish coin.

Notwithstanding these facilities for a circulating medium, the impression prevailed that hard times resulted because of the limited supply of money.

Gold and silver mines were scarce, unproductive, and distant. Banks, however, could be created, and banks could issue money and bring better times. Such was popular logic, and the idea was encouraged by the practice, but not warned by the experience, of continental times. In January, 1818, the Legislature, by one master stroke, chartered forty-six independent banks. All the chief towns were thus blessed, or supposed to be blessed, to say nothing of hamlets and small villages. The aggregate capital of these institutions was $8,720,000. With the one million dollars capital of the Bank of Kentucky and that employed by the branches of the United States Bank within the State, it would seem that all complaints about an insufficient circulating medium would have been finally hushed, and that, if plenty of money secured prosperity, this end was attained. But these comprehensive remedies, after all, proved ineffectual. Within a year, such of the forty-six banks as were in operation, and also the Bank of Kentucky, had suspended specie payment. The

supposed cause was a pressure for specie by the United States Bank. In February, 1820, all the independent bank charters were repealed. But, in November following, the Bank of the Commonwealth, at Frankfort, was chartered, with a branch in every judicial district. It was authorized to issue three million dollars of notes. Dr. Sam Johnson was accustomed, when borrowing a shilling, to add the condition "never to be returned." These notes were based on a similar financial idea. They were not redeemable. The bank's capital was more nominal than real. It shortly took two dollars of its notes to represent a dollar in specie. Imagination will serve instead of description to depict the distress of debtors that ensued.

Almost every one was in debt, and a large percentage hopelessly so. Some idea of the general condition may be gathered from a letter, dated Springfield, August 30, 1823, written by John Pope to Governor Ninian Edwards, of Illinois, who entertained the idea of removing to Kentucky, and buying a farm. The following are extracts from that letter: "There are many fine, well-improved farms in Kentucky, in good neighborhoods, to be had on good terms and long credit, but few such to be exchanged for outlands. They are generally mortgaged or the property of the banks. * * * Some of the finest farms in the neighborhood of Louisville are substantially the property of the banks, and can be had on long credit and on good terms."

Let it not be supposed, however, that the legislative arm was idle, in this emergency. It acted with as serene an indifference to all constitutional as of all financial principles. December, 1819, an act was passed by the Legislature to suspend, for sixty days, all judicial and execution sales. February, 1820, the right of replevin was extended from three to twelve months. In cases of imprisonment for debt (then an existing remedy in a creditor's favor), prison bounds were extended to the limits of each county town. In December, 1821, imprisonment for debt was entirely abolished. The right of replevin was then extended from three months to two years, unless the execution creditor endorsed on the writ that notes of the Bank of the Commonwealth might be taken in payment.

How this course of legislation would have culminated, if uninterrupted, can only be conjectured. When it had reached this point, it was suddenly arrested by the adverse decision of a circuit judge.

In a case arising in the Bourbon Circuit Court in 1822, Judge James Clark decided the two years' replevin law unconstitutional, on

the ground that so far as retroactive it impaired the obligation of contracts, and thus violated the Constitution of the United States. Wide and profound was the sensation produced by this decision, and the unlucky judge was regarded as little less than a public enemy. The Legislature, having been convened in extra session for another purpose, rushed to the rescue. May 18, 1822, Mr. Slaughter, member for Warren, offered a resolution in the House of Representatives, stating in the preamble that Judge James Clark had rendered a decision "in contravention of the laws of the Commonwealth," "had grossly transcended his judicial authority and disregarded the powers of the Legislature." A committee was appointed to inquire into the decision of the judge and report. On the 21st the committee reported. It had, it said, read Judge Clark's opinion in the case of Williams vs. Blair, published in the *Western Citizen*, of Paris.

"The principles and doctrines assumed in this opinion," says the report, "are incompatible with the constitutional powers of the legislative department of the Government, subversive of the best interests of the people, and calculated in their consequences to disturb the tranquillity of the country and to shake public confidence in the institutions and measures of the Government, called for by the condition and the necessities of the people." Five hundred copies of the report were ordered printed and Judge Clark summoned to appear before the House and answer to the "charge." On the 27th he made answer in writing. He thus apologized or rather explained to the affronted Solons: "In pronouncing a law that is incompatible with the Constitution to be void, the Judiciary does not assume a superiority over the Legislature. It merely affirms the paramount obligation of the fundamental rule. It announces only that the will of the people, as expressed in their Constitution, is above the will of any of the servants of the people. The decision was given after the most mature deliberation which I was able to bestow, and from a firm conviction of the principles there mentioned, and I must have been not only faithless to my conscience, but to the Constitution of the United States and the dignity due the judicial office, had I expressed any other opinion."

The response altogether was a manly and convincing paper. It did not, however, avert or appease legislative wrath.

Under the former State Constitution, as now, judges were removable from office by "address." If two-thirds of each branch of the Legislature voted an address requiring the governor to remove a

judge, the governor thereupon dismissed him from office. The Legislature now invoked this remedy. On the question of the address to remove Judge Clark, the vote in the House stood fifty-nine for, to thirty-five against, and so, for lack of the requisite two-thirds, the measure failed.

Meanwhile, an appeal had been taken from the obnoxious decision to the Court of Appeals. Another appeal (Lapsley vs. Brashear), from a decision of the General Court in which the stay law had been upheld, was simultaneously prosecuted. Messrs. Harrison, Breckinridge, and Robt. Wickliffe, as counsel, ably argued the unconstitutionality of the stay law. Opposing were Judge Rowan, Chancellor Bibb, Judge Haggin, and Lieutenant-Governor Barry. In October, 1823, both cases were determined in elaborate opinions by Chief-Justice Boyle and Judge Mills, respectively. The relief law was pronounced unconstitutional. The question involved has ever been one of difficulty. The Federal Constitution forbids the enactment of any law impairing the obligations of contracts. How far the Legislature may relax or interfere with the creditor's remedy, or means of enforcing a contract, without impairing its obligation, has ever been a vexatious question in all the courts of the country. Before the decision was rendered those favoring relief measures had been confident in the belief of the constitutionality of the stay law. It is true Clark's decision had created serious apprehension, but the counter opinion of the General Court had allayed this feeling.

The General Court consisted of two circuit judges, and so it was thus two to one. The legal profession wrangled and divided over the question. Able lawyers denounced the stay law as unconstitutional. But Bibb, ex-chief justice, and Rowan, ex-judge of the Court of Appeals, both affirmed its validity with specious and elaborate logic. Their high character and ability gave their utterances the weight of authority. Coupled with this, the Legislature, in the proceedings against Judge Clark, had not only pronounced its own opinion in favor of its constitutional power by an overwhelming majority, but manifested its purpose to resort to extreme measures with that officer or tribunal by whom its power was disputed. The preponderance of the debtor class and their unmistakable interest more potently, perhaps, than all else warped the public mind. In the face of all this the Appellate decision was indeed a shock and surprise. Instantly it provoked a civic storm that swayed and swept over the whole of the State.

Two hostile parties sprang into being, the one powerful and threatening extreme measures, the other weaker, but firm and undaunted. The judges of the Court of Appeals were the special objects of denunciation and attack by the dominant party. To their defense rallied the minority. For awhile its efforts were unavailing to stay the popular tide. But it heroically bided its time amid repeated defeats in full faith of the final triumph of the eternal principles of justice and right.

The Appellate bench at the time was occupied by John Boyle, chief-justice, and Benjamin Mills and William Owsley, associate justices. As the ordeal on which they were about to enter was the most critical through which judges were ever called to pass, something more than a word about them will be of interest.

William Owsley was born in Virginia, in 1782. The next year his father emigrated to Kentucky and settled on the waters of Drake's creek, near Crab Orchard. His early life was uneventful and obscure. By some means he obtained a fair education, taught school, acted as deputy surveyor, and, also, deputy for his father—then sheriff. Encouraged by Chief-Justice Boyle, then practicing law at Lancaster, he entered the office of the latter as a student, and, in due time, received license and was admitted to the Garrard bar. He was early successful, both in obtaining practice and reputation—Boyle proving a helpful and faithful friend. He practiced in many counties, as was the custom of the profession at that day. Hardin first knew him at Richmond, while he was attending the Madison court, during his early years at the bar. He represented Garrard county in the Kentucky House of Representatives in 1809 and 1811, in the latter year Hardin being his colleague from Nelson. April 8, 1810, he was appointed by Governor Charles Scott, judge of the Court of Appeals, but on account of a reduction of the number of the judges from four to three, he shortly resigned. On the happening of a vacancy, however, he was, in 1813, again appointed by Governor Shelby.

He, like his friend, preceptor, and associate, Boyle, was charged with an adherence to the precedents of the English common law, inconsistent with its proper adaptation to the litigation of a new country and a Republican government. Otherwise, he was an unexceptionable judge.

Benjamin Mills was a native of Worcester county, Maryland, born January 12, 1779. His family emigrated to the neighborhood of Washington, Pennsylvania, where he obtained his education and

studied medicine. He was awhile president of Washington Academy —afterward noted as Washington College. Removing with his father to Bourbon county, Kentucky, he quit medicine for the law, and as early as 1806 was admitted to practice at Paris. His ability and diligence soon brought him a good practice in the surrounding country. He was chosen to the House of Representatives of the State, serving six years—1806, 1809, 1813, 1814, 1815, and 1816. In the latter year, Isham Talbot defeated him, by three votes only, for the United States Senate. In 1817 he was appointed circuit judge, by Governor Slaughter, who, in February, 1820, commissioned him Appellate judge, as successor of John Rowan, resigned. Judge Mills was not personally popular, but his integrity was beyond question, and his attainments extensive and profound.

John Boyle, the chief-justice, although the elder of his associates, was enjoying the prime of superior faculties. He was humbly born October 28, 1774, at Castle Woods, on Clinch river, Va. In 1779 his father emigrated to Whitley's station, in Kentucky, and a few years afterward, when the protection of the stations was abandoned, settled on a farm in Garrard county, where his life was spent. Judge Boyle's earlier education was good, and, subsequently, he was instructed in Greek and Latin and the useful sciences by Rev. Samuel Finley, a Presbyterian clergyman. He studied law in Mercer county under the direction of Thomas Davis, a distinguished lawyer and politician, and removed to Lancaster and began practice in 1797. In 1800 he represented Garrard county in the Legislature, and in 1802 was a member of Congress. He was twice re-elected without opposition and declined a fourth term. By appointment of President Madison he served as territorial governor of Illinois in 1808–9. Returning to Kentucky he was tendered a circuit judgeship, which he declined, but in April, 1809, accepted the appointment of associate judge of the Appellate Court. The circumstances of his appointment to the Appellate judgeship are interesting. Governor Scott had appointed Ninian Edwards associate justice of the Court of Appeals. Edwards had made large landed investments in Illinois, and for that reason desired to remove thither. Boyle was discontented with the governorship—whereupon Edwards proposed an exchange of offices—that is, that each should resign and be appointed to the office held by the other. Edwards succeeded in effecting this arrangement. He removed to Illinois, but owing to adverse legislation by Congress, lost a large part of his fortune.

The year following Boyle was made chief-justice of Kentucky. He was in all respects the leader among his associates, and was a model judge of the old regime. Fortunately for the honor of the bench and the State, and the safety of the fundamental law, three men of more firmness, of greater intellectual and moral courage, or better fitted in all respects to meet the issue forced upon them, never at one time adorned the bench of that Court. "The judges," said the late Chief-Justice Robertson, "were charged with arrogating by their decision supremacy over the popular will. Their authority to declare void any act of the Legislature was denied. They were denounced by the organs and the stump orators of the Relief party as usurpers and self-made kings."*

Thus originated the Relief party—afterward called the New Court party. Founded on the most delusive sophistry, the sheer product of self-interest and passion, it nevertheless swept the State like a lava wave. Party feeling divided the people as they were never before divided in times of peace. Relief and Anti-Relief—Old Court and New Court—were the successive battle cries. The original issues between them survived but a few years. Yet the hostile organizations effected thereon were so fused by the heat that marked their origin that under different names their influence was felt in Kentucky a quarter of a century afterward. Mr. Hardin's talents peculiarly fitted him for leadership in this contest. He entered it with all his soul and strength, and, as will be seen later, contributed no little to that triumph of constitutional principles that then were, as they must ever be, the only safeguard of free government from the untold perils of communism and anarchy.

* In "Men and Times."

CHAPTER XI.

JUDGE BREAKING.

THE relief law had been declared unconstitutional by the Court of Appeals, October 8, 1823. An elaborate petition for rehearing by Bibb kept the question uncertain for some time longer. But the rehearing was finally denied.

The relief movement had been rather a popular sentiment than an organized political factor until after the assembling of the Legislature of 1823. There had been discussion, but the friends and the opponents of the mooted measures had looked with equal hope to the Appellate Court for a decision favorable to their respective views. The vote in the matter of Judge Clark the previous year showed twenty-four majority favorable to the relief measures. A vote at the present session, when the Relief party had clearly defined itself, developed sixteen majority in the House. As illustrating the state of public feeling, it is noteworthy that Judge George Robertson, intense anti-relief, was chosen speaker at its organization. A month later such a thing would have been morally impossible. In that interval the loose-lying elements favorable to relief had suddenly developed as a compact and intensely partisan organization.

John Rowan, then a member from the county of Jefferson, was the Relief leader. He was of Scotch descent. Born near York, Pennsylvania, in 1773, his father, William Rowan, removed a year later to Louisville, then a small village. The following year he settled at Fort Vienna, on Green river. In youth he was disabled by disease, and was awhile a sickly boy, and on this account his father and brothers made unusual efforts to afford him a superior education, so that he might make his way in the world. With a view to the education of his children, William Rowan removed to Bardstown. There John, at seventeen, entered the school of Dr. Priestly, and soon became an accurate and classical scholar, noted for bright parts. He studied law at Lexington with George Nicholas, a master of the law, and came to the bar at Bardstown in 1795. He soon attained high rank professionally. As an advocate in criminal cases he had few equals. As delegate to the State Constitutional Convention of 1799 from Nelson

county he had performed his first public service. After that he removed to Frankfort, and became secretary of State under Governor Greenup in 1804.

He had been member of Congress one term (1807–9) from the Bardstown district, to which he had returned. Seven times was he elected to the Kentucky Legislature—five times from Nelson and twice from Jefferson. He had been appointed Judge of the Court of Appeals in 1819. By his services there he had maintained his character for learning. He resigned the judgeship in 1820. "His magnificent presence, his rotund and mellow voice," says a discriminating writer, referring to his course in the Relief Legislatures, "ready and apt flow of speech, and a manner that was at once noble and aggressive, gave him complete domination over the majority."* It does not appear that he had any legislative lieutenant equal to such a chief. He was of great learning and resources. Metaphysical yet forcible, imperious yet persuasive and earnest at all times, his equal could not be found in making "the worse appear the better cause."

Ranking high in the Relief party was George M. Bibb, a profound lawyer, an ex-chief-justice of the Court of Appeals, and former United States Senator. Efficient co-workers were Barry, Kendall, and Blair. Barry, lieutenant-governor, had rare powers as a popular orator. His portrait strikingly resembles that of the eloquent Patrick Henry. Amos Kendall and Francis P. Blair, yet strangers to national fame, demonstrated the power of the press and the mightiness of the pen. The Relief party was in the majority, but the minority was respectable in numbers and formidable in talent and resources. Crittenden, Robertson, Green, Wickliffe, and Hardin were among the Anti-Relief leaders—the last ranking with the foremost. Mr. Clay was understood to be in sympathy with them, but took no active part. He was absorbed by national affairs and ambitions. In a letter at this period he expressed his purpose to "abjure Kentucky politics."

After the obnoxious Appellate decision, the course to be pursued was a question of difficulty with the Relief leaders. Naturally, the people of the State were conservative. Aside from the respect due to its dignity and power, an able bench had given the Court of Appeals a strong hold on popular esteem. But so great was the prevailing excitement that the majority was ready to sanction any measure that would uphold the Relief laws. The juncture was critical. Something had to be done by the Relief leaders in deference to popular clamor—but what? A mistake could not be hazarded.

* John Mason Brown.

A vigilant minority was ready to profit by it. A line of action was, however, soon matured. The proceeding by address had failed in Clark's case. The Relief party, though in the majority, fell short of the necessary two-thirds, then and now. If "address" had been feasible, the question of its effect on the public mind was uncertain. There was danger of a shock. If the judges were removed, it was not certain how Governor Adair might fill their places. Adair had been long in public life, and had served his country in war and in peace. But he had been suspected by many of complicity with Burr, and thus public confidence in him had been weakened. He was now old. He adhered to the majority, but kept terms with the minority so well as to be regarded as an uncertain political quantity. So the majority argued that, before resorting to stones, some admonitory turf should be used. It was also necessary to educate the public mind in regard to some very difficult questions of law. It was not only necessary to show the error of the court, but also indispensable to let the people understand that, from the predicate, "the people rule," flowed certain deductions; that is, that the Legislature represented the people, that that body spoke through its majority, and that any executive or judicial obstruction of the will of that majority uprooted free government. Pursuing this line of reasoning, Rowan, on December 10th, introduced some resolutions with a remarkable preamble. The resolutions covered less than a page, the preamble twenty-six.

The decision of the court was reviewed and combated with great ingenuity, and in a style of reasoning more fitted to mislead the ignorant than to convince the intelligent. In short, that preamble furnished the platform on which the new-court advocates planted themselves, and the reasons by which they defended their position. Its great length precludes its insertion here, but its historic value and its importance in showing the views of Rowan and his followers are sufficient apology for including it in Appendix.*

The resolutions denounced the decision as subversive of the dearest and most invaluable political rights, and stated that if it were not reversed, the Legislature ought not furnish any facilities for its enforcement, but should withhold the agency of the ministerial officers in propagating its erroneous doctrines. "The Legislature," it was said, "should repeal laws believed to be constitutional, when not expedient, not the courts." The resolutions underwent a spirited discussion, after which they were adopted by a decided majority.

* See Appendix, Note B.

The purpose of these resolutions was manifest. There was some hope that the court would reconsider and reverse its decision. Failing in this, aggressive steps were to be taken, if the people so decided. Formal platforms for political parties had theretofore been unknown. The "preamble" served such a purpose for the Relief party. To retain it in power was to endorse its platform.

In the election of 1824, a governor, lieutenant-governor, and members of the Legislature were to be chosen. Solomon P. Sharpe, writing from Shelbyville, in February, 1824, to a friend at Washington, said: "We are likely to have a warm contest for governor. The State will divide into two parties, Relief and Anti-Relief. The contest will be between Desha and Tompkins. I fear our State will undergo a degree of excitement and division of parties that may disturb it for years to come."

This letter was prophetic in more than one respect. The Relief party, as predicted, put forth Joseph Desha for governor, and Robert B. McAfee for lieutenant-governor. Christopher Tompkins and W. B. Blackburn represented Anti-Relief. In each county, the strongest men were brought out by each party for the Legislature. The contest was waged vigorously and ably throughout the State, and at the election, in August, the Relief party won. Only part of the senators were chosen. That body stood twenty-two Relief to sixteen Anti-Relief.

In the House, sixty-one of the one hundred members belonged to the Relief party. The following vote in the gubernatorial contest illustrates the drift of popular feeling: Joseph Desha, 38,378; Christopher Tompkins, 22,499; R. B. McAfee, 33,482; W. B. Blackburn, 25,382. Rowan was again chosen to the Legislature. The well-known Robert J. Ward, from Scott, and Philip Triplett, from Daviess, were also members. The Anti-Relief party had lost in numbers but gained in ability. James Simpson, afterward judge of the Court of Appeals, represented Clark. Daniel Breck, also, subsequently, an Appellate judge, with Squire Turner, an eminent lawyer, was chosen from Madison. Henry Crittenden, afterward a congressman, was member from Shelby, Robert Wickliffe, from Fayette, and Ben Hardin and Ben Chapeze were elected for Nelson. George Robertson was again a member. Rarely has a legislative body averaged so well in talent.

The Legislature reassembled and organized November 1st. Robert J. Ward (Relief) was elected speaker.

The preamble and resolutions of the preceding session had in effect been approved by the people at the polls. The obnoxious decision, however, was still unreversed. The three judges, or the three "Kings" (as Relief partisans called them), stood out against the majority of the people. "Turf" had been tried without effect. It seemed that nothing but "stones" would dislodge them. December 20th, a long and fulminating preamble and resolutions, for the removal of the Appellate judges by address, were offered in the House. They did not, however, receive the requisite two-thirds majority, and so were lost. This result had been anticipated by the Senate. December 9th, that body had passed a bill to abolish all acts organizing the Court of Appeals, and provided for its reorganizing by a vote of twenty-two to sixteen. On the 20th, the House began the consideration of the Senate bill for reorganization. It was discussed with great spirit and ability for three days. The Constitution had established the Court of Appeals, but left the Legislature to organize it, by fixing the number of judges. The Legislature had, long ago, passed acts for this purpose. These, it was contended, it might repeal. It had reduced the number of judges from four to three, in 1812. The voluntary resignation of the fourth judge had, at that time, prevented controversy. The Constitution provided that the judges should be appointed by the governor, by advice of the Senate, and hold office during good behavior. So it was argued that a judge could not be "repealed" out of office.

Mr. Hardin closed the debate on the Anti-Relief side. He began speaking at nine o'clock, the evening that the bill passed. The final vote occurred at midnight. The following is Mr. Hardin's speech:

"Mr. Speaker: The late hour of the night, the protracted period of the discussion, the impatience of the House to get the question—all unite and combine to embarrass me. That embarrassment is heightened by my belief and opinion that a majority in this House is pre-determined to pass this bill, and that any and everything I can say will be of no avail; but, in the language of the man of God who ministers at the sacred altar, if I can, in this good and great cause, make one convert, nay, even bring one man to reflect seriously, I shall be amply paid and compensated for all my labor. But, alas! my efforts, I fear, will be as vain as those of the boy who attempts to find where the bow that spans the arch of heaven reaches the ground.

"In this contest, we have been denominated judge supporters and the Court party. As for myself, I, in the presence of this crowded and august assembly, with uplifted hands, deny the charge. No ties of ancient hospi-

tality, none of intimate friendship, none of blood, bind me to a single judge in Kentucky. I stand here the humble advocate of the great rights of the people. I, together with my children, in common with the great body of the people, claim a freehold estate in the Constitution of my country. That has been invaded, and upon the last rampart do I now make my stand. So far as I can defend that, I incidentally defend the judges, and no farther.

"In the argument of this question, those gentlemen who advocate and support this bill have triumphantly asked if the people have not the right to make what form of Government they please; to change it and alter it as and when they please; and if the Government is not made for the people, and not for its functionaries who are but their agents and public servants. No man on this floor is a more determined advocate for the rights of the people than I am. I concur most cheerfully and heartily in the great political maxim that the people have a right to choose their own form of Government, and to give it from time to time such new modifications as may suit them; that this right is indisputable and unalienable; and that the Government is made for the people, and not for the officers who administer it. Those who oppose the present measure do not question one of the positions which I have just now stated, but deny their application to the present question. We are not now in convention making a constitution, nor are we revolutionizing the Government and making a new one, which always renders a resort to first principles necessary. The contest is, what are the relative powers of the three departments of the Government, as now organized, under the present constitution; not what kind of a constitution we ought to have, or what defects are in it, and what amendments and alterations ought to be made. The fallacy and defect of all that has been said and written on the opposite side is, its want of application to the real question. The gentlemen on the other side declaim eloquently upon what politicians call first principles, which none dispute, and endeavor to instill into the minds of the people that the great and fundamental rights of self-government are invaded and a judicial despotism is about to be established. Nothing of that kind exists. Such assertions are unfounded, untrue, and utterly false. The tocsin of alarm is to be sounded; the people's jealousies are to be awakened and their fears excited. The opposite side are afraid to let the people coolly, deliberately, and dispassionately reflect, lest their real motive be discovered, which is nothing more nor less than this; to seize the reins of Government, enjoy the emoluments of office, which, under various pretenses, they will increase, and at the same time keep from paying their debts.

"After having made these preliminary remarks, I will now call the attention of the House more particularly and immediately to the subject under consideration. The bill proposes a reorganization of the Court of Appeals, and by that means to get clear of the present judges and put four others on the bench. I will first ask, why this change? Do the present laws as to the

time of holding the court, the jurisdiction of the court, or the salaries of the judges, need amendment? and if so, what amendment? None has asserted that to be the fact. It is admitted by all that the real object is to remove the present judges.

"Before I examine the question relative to the power of the Legislature to remove the judges in this way, permit me to ask, what have they done to merit such severe chastisement from the Legislature? The charge against them is that they have decided that the replevin law of 1820 in its retrospective feature impairs the obligation of contracts which had previously been made, and is, therefore, a violation of the Constitution of the United States and the State of Kentucky.

"The report of the joint committee has intimated that the judges have decided the occupying claimant laws unconstitutional. Such an insinuation is false and groundless, and made with a perfect knowledge that the same was untrue. I boldly and without fear of contradiction assert that the judges of that court have decided directly, in the case of Fowler vs. Halbert, 4 Bibb, page 52, that the occupying claimant laws are constitutional, and, incidentally, they have recognized the validity of those laws in more than twenty cases. What renders the assertion unpardonable is, that the gentleman who drew the report was apprised of that decision, but he knew that the great body of the people were extremely excitable and sensitive upon the subject of the occupant laws. To keep up the alarm was necessary to the attainment of the views of the party, and, like some veteran politicians, he has, I fear, learned the maxim that the end sanctifies the means.

"The first question which presents itself for investigation is this: *Is the law of 1820, in its retrospective feature, unconstitutional, or not?* That law, among other provisions, allows a replevin in the clerk's office, for two years, upon debts contracted and due before the law was enacted. It is an undeniable fact that such a right did not exist when the contract was made. There has been much said and written about right and remedy, and how far the remedial laws of the land form a part of the contract. I do not intend, upon that part of the question, to detain the House long, and shall, with one or two remarks, content myself to submit that branch of the subject with what has been written by the judges and said by my honorable friends, with whom I am happy to agree. There is great difficulty in drawing the line throughout, between right and remedy; and the inquiry, in some of its parts, will baffle the most subtle intellect. We can all distinguish night from day, but they so run into each other in the twilight that the precise time when one is gone and the other commences is hard to ascertain. My definition of the obligation of a contract is this: The effect, which the existing laws of the place where the contract is made give to the stipulations and covenants of the contracting parties. In some cases the laws declare the effect to be to enforce a specific execution of the contract; in

others, the laws give damages in consequence of a breach of the contract. The rule to ascertain the amount of damages is fixed by law, and when the law gives no remedy, either specifically or in damages, then there is no legal obligation. A contract made in Kentucky, where there is no consideration given, can not be enforced anywhere; and why? Because, for such contract the laws of the place where the contract is made gives no remedy to enforce it, or to recover damages for a failure to perform it. The same rule would apply when the contract was made about the sale of land, and there was no writing evidencing the same, or when the consideration was illegal or turpid.

"The statute of limitations is only remedial, because it withholds the remedy after a certain time; but it is evident and manifest that the obligation of a contract does consist in the effect which the law gives to the contract, and that effect is its enforcement specifically, or damages for a breach thereof. For, until the parties themselves fail to perform, the law can take no notice of it; the laws never operate until the parties refuse to act. A contract consists of two parts—the thing agreed to be done, and the time when the same shall be done; these two are fixed by the parties, and when there is a failure in either of the particulars, the legal right to enforce the contract, or recover damages, commences. The legal right could not accrue, unless time was a material part of the contract, and there had been a failure in that part. Any law purposely made to postpone the time of enforcing a contract, or recovering damages for a breach thereof, to a longer period than the laws in force when the contract was made allowed, unquestionably impairs the obligation of the contract, if time be a material part of it; and I trust I have already shown that time is a material part. The argument that time is no part of the contract is at war with the common sense and experience of every man. Suppose I owed you, Mr. Speaker, one thousand dollars, due to-morrow, and the Legislature, to-night, was to pass a law that I should not be compelled to pay you for one hundred—nay, two years; I have no doubt you would, without any hesitation, say that such a law interfered with your contract, and that the time of getting the money was material with you. If the Legislature can extend the time of payment beyond the delays necessary and incidental to the administration of the law, it can as well extend it to one hundred as two years; the principle is the same, except that one is a more outrageous abuse of power, unconstitutionally exercised, than the other.

"The law of 1820 gives the right of replevin, for two years, to all debts then existing, or which may thereafter be contracted. It is only the retrospective part of the law which has been decided unconstitutional. The Constitution of Kentucky declares 'that no ex post facto law, or any law impairing contracts, shall be made.' The Constitution of the United States declares that no State shall 'pass an ex post facto law, or law impairing the

obligation of contracts.' These clauses of the two constitutions were intended both to secure a man's person and property from retrospective laws. The term 'ex post facto' has been construed to apply to laws of a penal character; that no law should be made affixing the punishment to a particular act, after the same was committed. The other member of the sentence has ever been construed so as to prevent the Legislature, not only from passing laws impairing contracts in the literal sense of the word, but also to prevent them from passing laws to divest an individual of a vested right. That this construction was given to that part of the Constitution of Kentucky by the convention is evident from another part of the same instrument, which reads in these words: 'Nor shall any man's property be taken or applied to public use without the consent of his representatives and without just compensation being previously made to him.' By this last clause of the Constitution it is manifest that no man's property, even for public use, can be taken without just compensation; and if it can not for public purposes, without compensation made him, surely none will be bold enough to contend that it can, either directly or indirectly, be taken for private purposes without any remuneration at all. Such a power assumed by the Legislature would render insecure all we have of every kind and description, and defeat one of the great objects of government, which is the security of our property.

"The Supreme Court of the United States, the Courts of Appeals of Virginia, South Carolina, and New York, have all decided that no law impairing the obligation of contracts, or retrospective in its operation, can be passed. Having the seventh volume of Johnson's Reports of the decisions of New York in my hand, I beg the indulgence of the House while I read a passage out of it.

"It is a principle in the English common law, as ancient as the law itself, that a statute, even of its omnipotent Parliament, is not to have a retrospective effect. (Bracton, lib. 4, fol. 228, 2 Inst., 293.) This was the doctrine as laid down by Bracton and Coke; and in Gilmore vs. Shuter (2 Mod., 310, 2 Lev., 227, 2 Jones, 108), it received a solemn recognition in the Court of King's Bench In that case a suit was brought after the 24th of June, 1677, upon a parol promise made before that date, but to be performed after that date, and the question was, whether it was void by the statute of frauds and perjuries, which enacted that 'from and after the 24th of June, 1677, no action should be brought to charge any person upon an agreement made in consideration of marriage, etc., unless such agreement be in writing.' It was admitted that the promise declared on was of the same kind with those mentioned in the statute, but the court agreed unanimously that the statute was to be read by a transposition of the words, for that it was not to be presumed that the act had a retrospect to take away an action to which the plaintiff was then entitled, and that the other construction would make the

act repugnant to common justice. When we consider that this decision was pronounced as early as the reign of Charles II., we are forcibly impressed with the spirit of equity and the independence of the English courts. So, again, in the modern case of Crouch vs. Jefferies (4 Bur., 2460), which was a *qui tam* suit for a penalty, the question was, whether a statute passed after the commencement of the suit, allowing delinquents, by such a day, to pay a stamp duty and rid themselves of the penalty, should affect the case of a suit already commenced, and the Court of King's Bench unanimously determined that it could not. 'It can never be the true construction of this act,' said Lord Mansfield, 'to take away this vested right and punish the innocent pursuer of it with costs.

"'The maxim in Bracton was probably taken from the civil law, for we find in that system the same principle, that the law-giver can not alter his mind to the prejudice of a vested right (Dig. 50, 17, 75). This maxim of Papinian is general in its terms; but Dr. Taylor (Elements of the Civil Law, 168) applies it directly as a restriction upon the law-giver; and a declaration in the code leaves no doubt as to the sense of the civil law (Cod. 1, 14, 7). This passage, according to the best interpretation of the civilians, relates not merely to future suits, but to future as contradistinguished from past contracts and vested rights. It is, indeed, admitted that the prince may enact a retrospective law, provided it be done expressly; for the will of the prince, under the despotism of the Roman Emperors, was paramount to every obligation. Great latitude was anciently allowed to legislative expositions of statutes; for the separation of the judicial from the legislative power was not then distinctly known or prescribed. The prince was in the habit of interpreting his own laws for particular occasions. This was called the *interlocutio principis;* and this, according to Huber's definition, was *quando principis inter partes locuntur et jus dicunt* (*Proelec. Juris Rom.* vol. 2, 545). No correct civilian, and, especially, no proud admirer of the ancient republic (if any such then existed), could have reflected on this interference with private rights and pending suits without disgust and indignation, and we are rather surprised to find that, under the violent and irregular genius of the Roman government the principle before us should have been acknowledged and obeyed to the extent in which we find it. The fact shows that it must be founded in the clearest justice.

"'Our case is happily very different from that of the subjects of Justinian. With us the power of the law-giver is limited and defined. The judicial is regarded as a distinct, independent power. Private rights have been better understood and more exalted in public estimation, as well as secured by provisions dictated by the spirit of freedom and unknown to the civil law. Our constitutions do not admit the power assumed by the Roman prince, and the principle we are considering is now to be regarded as sacred. It is not pretended that we have any express constitutional provision on the subject, nor

have we any for numerous other rights dear alike to freedom and justice. An *ex post facto* law, in the strict technical sense of the term, is usually understood to apply to criminal cases, and this is its meaning when used in the Constitution of the United States; yet laws impairing previously-acquired *civil* rights are equally within the reason of that prohibition, and equally to be condemned. We have seen that the cases in the English and in the *civil* law apply to such rights, and we shall find upon further examination that there is no distinction in principle, nor any recognized in practice, between a law punishing a person criminally for a past innocent act, or punishing him civilly by divesting him of a lawfully-acquired right. The distinction consists only in the degree of oppression, and history teaches that the government which deliberately violates the one right soon ceases to regard the other.

"'There has not been, perhaps, a distinguished jurist or elementary writer within the last two centuries, who has had occasion to take notice of retrospective laws, either civil or criminal, but has mentioned them with caution, distrust, or disapprobation. Numerous authorities might be cited, but I will select only two, and those no ordinary names. Lord Bacon gives more toleration to retrospective, and particularly to declaratory laws, than can now be admitted under our more precise distribution and limitations of the powers of Government; yet he was, at the same time, duly sensible to their danger and injustice. He confines them to special cases, limits them with solicitude, and speaks of them in general with reproach. Puffendorf lays down, without any qualification, a general and pointed condemnation of all such laws. He says: "A law can be repealed by the law-giver, but the rights which have been acquired under it while it was in force do not thereby cease." It would be an act of absolute injustice to abolish with a law all the effects which it had produced. Suppose, for example, that there exists a law that the father of a family may dispose of his property by will. The Legislature may, without doubt, restrain this unlimited right of disposing by will, but it would be unjust to take away the property acquired by will during the existence of the former law.

"'The Constitution of New Hampshire, established in 1792, has an article in its Bill of Rights that "retrospective laws are highly injurious, oppressive, and unjust," and that no such laws should be made, either for the decision of civil causes or the punishment of offenses. It was also an article in the Constitution established for the French republic, in the year 1795, that no law, criminal or civil, could have a retroactive effect. Even French despotism, atrocious as it is in practice, yields in its laws to the authority of such a principle; for the same limitation is laid down as a fundamental truth in the code now in force under the sanction of the French empire. And as often as the question has been brought before the courts of justice in this country they have uniformly said that the objection to retrospective laws applies as well to those which affect civil rights as to those which relate to crimes.

"'In the case of Osborne vs. Huger (1 Bay's Rep., 179), which came before the Supreme Court of South Carolina in 1791, the question arose upon a statute relative to the duty of sheriffs as to civil process. The court rejected the construction of a retrospective operation of the statute according to its literal meaning; and Judge Burke, in particular, said that he should not be for construing a law so as to divest a right, and that a retrospective law in that sense would be against the Constitution of the State. The judges of the Supreme Court of the United States, in the case of Calder vs. Bull (3 Dallas, 388), speak in strong terms of disapprobation of all such laws; and in Ogden vs. Blackledge (2 Cranch, 272) they consider the point too plain for argument that a statute could not retrospect so as to take away a vested civil right.

"'This train of authority declaratory of common sense and reason of the most civilized States, ancient and modern, on the point before us, is sufficient, as I apprehend, to put it at rest and to cause not only the judicial, but even the legislative, authority to bow with reverence to such a sanction.'

"There is another objection to the constitutionality of the law. After I obtain a judgment upon a debt due before the law passed, the defendant, without my privity, knowledge, or consent, can come into the clerk's office and enter into bond to pay me in two years, which bond discharges the judgment. I ask, does not the Legislature destroy my first contract and compel me to take a new one, without my consent? The law, not only in that respect, impairs the obligation of my first contract, but substitutes a new one in its stead, and that against my will. At the same time it gives the defendant, from the date of the last bond, two years to pay it. This is called, by the Legislature, replevin; it is no replevin. Jacob, in his law dictionary, defines replevin thus: 'A replevin is a remedy grounded and granted on a distress, being a redeliverance of the thing distrained.' Such were the rules existing at the time the Constitutions of the United States and of Kentucky were made. It is not the name of the law that is to give constitutional sanction, it is the provisions of the law itself. I will not enter into the question whether all replevin laws are unconstitutional, because the same is not necessary, as no such decision has been given by the Court.

"On the other side, it has been urged, with some plausibility, although there is nothing substantial in it, that the right to a replevin for two years is not altering the contract, or the time of payment, but is only refusing to give you the aid and assistance of the law, to coerce payment for two years by withholding the process of the law. That reasoning does not afford even a shadow of an answer to the right given by the law, to replevin in the clerk's office for two years, before the plaintiff has asked for an execution. I would ask, gentlemen, where is the difference between authorizing my debtor to discharge my judgment, before I issue execution, by giving a new note payable in two years, and a law, after my debt fell due, and before suit was commenced, compelling me, if a new note, payable in two years, was

tendered, to receive it in lieu and as a substitute for the first note? For my part, I can perceive none.

"The Constitution further provides 'that all courts shall be open, and every person for an injury done him in his lands, goods, person, or reputation shall have remedy by the due course of law, the right and justice administered without sale, denial, or delay.' I ask this House to answer me one question—is your whole relief system only the necessary delays of courts of justice, in the enforcement of the laws, or is it not intended to delay or deny the administration of law and justice until the creditor is forced to compromise with his debtor and take Commonwealth's paper, which is but half the amount of his debt? No State can 'make anything but gold and silver coin a tender in payment of debts;' and to get clear of the operation of that clause in the Constitution of the United States (for if it had not been for that clause, instead of replevin upon replevin, the relief system would have made paper a tender at once) the Legislature of Kentucky deny, hinder, and delay justice, until the creditor shall give up one-half his demand to get the other. It is in vain to tell me, or the people of Kentucky, or of the United States, that this is a system of replevin. It is a denial of justice for the worst of purposes, that injustice should be done the creditor. As I said before, it is not the name of a law that is to characterize it. To turn a lion out in the streets of Frankfort he would be no less dangerous because he might have a label fastened to his forehead that it was a lamb. Every man, woman, and child in Kentucky understood your relief system to be an indirect mode of making your bank paper a tender in payment of debts.

"It has been repeatedly asked, in this House and elsewhere, has the Legislature no power, in cases of famine, pestilence, and war, to pass such laws? To that I answer, that since the commencement of this relief system we have not been visited and scourged either by famine or pestilence. Crops have been abundant and markets tolerably good. As to war, there has been but one kind; men have smuggled themselves into power, who have their fellowman's work, property, or money, and wish to make him no return for it. The only war which I know of is between honesty and dishonesty.

"But, Mr. Speaker, the Constitution makes no distinction between war and peace. The same construction must be given to it at all times; that is, its fair import and meaning. It is astonishing that gentlemen should contend that the Constitution should be varied in its construction and exposition to suit the state of the times.

"Some reliance has been placed upon this part of the Constitution—'that no power of suspending laws shall be exercised, unless by the Legislature or its authority.' The first question arising from this clause of the Constitution is, what part of the laws can the Legislature suspend? I answer, just such parts as the Legislature can repeal. The supreme law of

this land is the Constitution of the United States, the acts of Congress made in pursuance of the Constitution, and treaties made by the United States, within the treaty-making power; next to that, but yet in subordination thereto, is the Constitution of Kentucky. All those laws are above any act of our State Legislature. Is there any man in this House so infatuated with the relief system as to suppose the Legislature of Kentucky can repeal the Constitution of the United States, or the Constitution of Kentucky? Surely there is none. It is absurd to suppose that the power to suspend laws is greater than the power to repeal. While upon this part of the question, it may not be amiss to remind the House of the memorial of the late Governor Adair, laid before us at the present session. In his memorial he says that the law compelling the officers of the government to take Commonwealth's paper was unjust and unconstitutional, as it respects his own salary. It will be recollected by the House that, as governor, he approved and signed the law; that he was the warm advocate for it, we all know.

"I should be sorry to treat with disrespect our late governor; I have an affection for his person, a reverence for his character; and I rejoice that his political sun is about to set with unclouded serenity. But yet, that magnanimity which made him declare the law unjust and unconstitutional as to himself seemed so peculiarly characteristic of the party to which he belongs, that I could not help admiring it. What! unjust and unconstitutional to the governor who approved and signed the law? And yet, as to the constables, sheriffs, jailors, and magistrates, who receive but a small pittance from government, it was all right and just!

"I have said this much, Mr. Speaker, to prove the law of 1820, which I some time ago referred to, was, in its retrospective feature, unconstitutional. At the same time, I have endeavored to answer some of the arguments of gentlemen which properly belonged to that branch of the subject.

"The next question is the right, nay, the duty, of the judge to decide all laws unconstitutional which he in his conscience believes to be so. The Constitution of the United States contains this provision: 'This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.' The Constitution of Kentucky is above any legislative enactment, or why have a Constitution at all? When a cause is brought before the court, the judges must apply the law to the facts of the cause; the question then again occurs—what is the law? The plaintiff relies upon the Constitution of the United States and the Constitution of Kentucky. The defendant relies upon an act of the State Legislature. The law of the Legislature is opposed to, and contradicts, the two Constitutions; what is the judge to do? To let the act of the Legislature

govern is giving it more authority than the Constitution, and renders the Constitution a dead letter. The judge, it must be recollected, is sworn to support both Constitutions. Can any man hesitate, for a moment, in saying what the judge is bound to do? I answer, no; he must decide the law unconstitutional, if that be his opinion, or he is perjured.

"But some of the learned civilians and eloquent Demosthenes of the present day, whose immortality is about to be handed down to posterity in drunken toasts over a whisky bottle, draw a distinction between a violation and a palpable violation, which, to my mind, is incomprehensible. Who is to judge of the confliction between the Constitution and the act of the Legislature? The judges. What is to distinguish a violation from a palpable violation? Those learned gentlemen have given the world no sensible landmark, because, in the nature of things, there is none. But, according to their idea, this must be the rule to contradistinguish the two kinds of violation—when the judge's mind becomes satisfied, upon examination without any process of reasoning, and the conviction just at once flashes upon the mind. Suppose there are two judges on the bench. One arrives at his conclusion by intuition; those profound constitutional lawyers say he has a right to decide the law of 1820 unconstitutional, because, to his mind, it is palpable. The other comes to the same result with great deliberation, after a long and laborious investigation. The last judge shall not be permitted to decide the law unconstitutional, because, to his mind, it is not palpable. But suppose, farther, that a judge to-day perceives the unconstitutionality of a law, very clearly; but, for want of apt words to express his opinion, he indulges in circumlocution; according to the late doctrine of the *new school*, he shall be broke if he decide the law unconstitutional. But on to-morrow, having let blood and taken a dose of medicine the over-night, his opinion, yet remaining unaltered upon the same subject, is expressed with great clearness, perspicuity, and brevity; for the last opinion he is not to be made accountable. I have no hesitation, Mr. Speaker, in pronouncing that this late doctrine of violations and palpable violations is either a reproach to the law and constitutional learning of Kentucky, or to its candor and sincerity.

"Having made these few remarks upon the right and duty of the courts to decide a law unconstitutional, if they believe it so, I will now proceed to another point, which seems next in order, that is, the power of the Legislature, constitutionally exercised, to remove the judges for deciding a law unconstitutional.

"In the commencement of my argument, I reminded this honorable body that we were not the people, assembled in convention, making a government. On the contrary, we were only one department of the government, and in ascertaining our powers no recurrence could be had to first principles; but our inquiry must be confined to our powers under the Con-

stitution. The basis upon which this and all other republics are erected is the will of the people; the object is the good of the people; and a principle which runs through every branch of the government—or otherwise the same could not be republican—is universal responsibility in all the officers of government to the people, not to us—the omnipotent Legislature.

"The government of the people is divided into three distinct co-ordinate departments; one to make the laws, another to expound the laws, and a third to execute them. The departments emanate from the same great fountain of power—the people; they are equal and independent of each other, with a few exceptions, which shall be noticed hereafter. And it is necessary, in the nature of things, that it should be so, for the people intended, in making their government, that they should be checks and balances to each other.

"This great principle of three departments of governments—co-equal, co-ordinate, and independent of each other, to a great extent—has been considered one of the pillars upon which this republic, that of the United States, and our sister States, are erected. It is an indispensable ingredient to the very existence of all republics.

"I have previously said that another principle, equally indispensable in a republic, was universal responsibility from all the officers of government to the people. The only responsibility of the Legislature is the right of the people not to re-elect, which we all know they frequently, very frequently, exercise. It would not be convenient, after a governor was elected, to try him by all the people of the government, because they could not be assembled as a court; therefore, the Constitution has pointed out how he shall account, by an impeachment before the Senate, when sitting for that purpose; not as a Senate in its law-making character, but as a court of judicature. In the same way almost every civil officer in the government may be brought to account.

"I beg the attention of the House while I refer to the Constitution itself. 'All impeachments shall be tried by the Senate; when sitting for that purpose the senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two thirds of the members present.' The governor and all civil officers shall be liable to impeachment for any misdemeanor in office. 'The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; but for any reasonable cause, which shall not be a sufficient ground for impeachment, the governor shall remove any of them on the address of two-thirds of each house of the General Assembly.' I ask, is it the law-making character of the Legislature that two-thirds of the members may address the governor to remove a judge? I answer, no; but as the special agents of the people; and it is in that way that the people make the judges account to them by making them account to their agents, especially appointed for that purpose.

"If this position be correct, the power to remove, being a specially delegated one, can not be exercised unless for the causes specified in the Con-

stitution. A wider range than this can not be taken. The power to remove the other officers of government is not a power resulting from their legislative jurisdiction to pass laws, for the public good, for it is no part of the law-making power. Furthermore, the moment you extend it beyond the causes pointed out in the Constitution, and give the latitude contended for, the independence of the other departments of each other is destroyed, the checks and balances of the Constitution are prostrated and trampled under foot.

"I now ask the attention of the House, while I endeavor to point out the grounds for which a judge may be impeached and addressed out of office. A judge may be impeached for any misdemeanor in office, and nothing else. He may be addressed out of office for any reasonable cause, which shall not be a sufficient ground for impeachment. If the judge misbehave in his office he is to be broke by impeachment. I would ask this House if it be a misbehavior to decide a law unconstitutional if the judge believe that to be the fact? surely not; but, on the contrary, he would misdemean himself if he did not so decide. The judge can only be addressed out of office for any reasonable cause, which is not a sufficient ground for impeachment; the clear meaning of the Constitution is, that for official misconduct he is to be impeached, and can not be addressed out; for the Constitution says, 'and which shall not be a sufficient ground for impeachment.' What then would be a sufficient ground for address? I answer, want of capacity, or of moral character; for a judge can not be removed at the will and pleasure of the Legislature, for the cause of removal must be reasonable.

"Is there any charge that the judges are destitute of any of those virtues which adorn a moral and Christian man? I answer, no. Is it pretended that they want capacity? I have heard of no complaint of that kind; nay, I hazard nothing in saying that, when passion and prejudice shall subside, their opinions will be considered equal to any judges we ever have had, and may fairly enter the list of competition with the proudest of their present persecutors. I again demand, what have they done? We are told that they have decided our relief system unconstitutional in its retrospective feature. That is no misdemeanor in office, for it is their right and duty to so decide if that was their opinion. That decision furnishes no evidence to my mind that they were corrupt or that they wanted capacity or moral virtue. Nor can any honest, well-balanced mind, uninfluenced by party or prejudice, say that the decision furnishes any evidence of official corruption, want of capacity, or a destitution of moral rectitude. To say a man shall pay his debts according to contract is at all times honest and just, in all ages and in all countries; and I trust we have not yet sunk so low that such a decision is to be without a friend or advocate upon this floor.

"We are told the good of the people requires their removal. I deny it. The good of the people never can require their Constitution to be violated, first, in the enactment of the law, and next, in the removal of the judges.

Secondly, the Constitution does not provide that whenever the Legislature may think the good of the people requires it that the Constitution or any of its provisions can be dispensed with; and if there be no such provision, it necessarily follows that it does not authorize judges to be removed because the Legislature, in the plenitude of supposed or usurped powers, may choose to violate any part of it.

"Gentlemen ought to be cautious when they depart from the fair, obvious, and manifest import of the Constitution, as the same was written by the convention, in pursuit of what they suppose or call the public good. They are traveling on dangerous ground. It is nothing more or less than the plea of all tyrants and despots, for in their most wanton acts of oppression and cruelty they plead the public good and the public necessity. Bonaparte pleaded necessity, public good, and glory of France, for his conscriptions and wars. England relies on the same plea for her system of oppressive taxation and her prostration of everything like civil liberty. John Adams had the same defense to make for his alien and sedition laws, and all his acts of official misconduct and maladministration. The truth is, no republic can exist long without a Constitution, the charter of their liberties; and that charter amounts to nothing unless it is reverenced by all and obeyed by all, and never broken or evaded under any pretense whatever, even if it should assume the imposing name of public good or necessity. It is by imposing names and appearances we are always deceived. The sirens beguiled by their music. Christ was betrayed by a kiss.

"We are told, in the next place, that the judges ought to be removed by way of asserting the supremacy of the Legislature. That doctrine goes to an entire annihilation of the Constitution, and is subversive of all Government. The Constitution contains a delegation of power to the three departments of Government, and also it contains prohibitions and restrictions upon the three departments of Government. Certain great fundamental rights are reserved to the people. The three departments are to check each other, if either exceed its constitutional power and encroach upon the other departments or the great rights reserved to the people.

"Suppose the Legislature were to abolish trial by jury, or refuse to let a man vote who was not worth one thousand dollars, or take away the liberty of conscience and the right to worship God in our own way, what is the remedy? None but an appeal to the court; and that can be of no avail if you say the judges are to be removed should they decide the law unconstitutional, because the vindication of legislative supremacy requires their removal as well in one case as another.

"The Legislature a few years ago enacted a law that every person carrying a dirk concealed should be fined a hundred dollars. The Court of Appeals decided the law unconstitutional, because the Constitution said the right of the citizen to bear arms shall not be questioned! Why was not the legisla-

tive supremacy asserted then? The reason is evident. It did not interfere with that class of men who wish never to pay their debts, and the other class of gentlemen who carry and use dirks were not displeased at it.

"I will now call the attention of the House to the bill itself. The bill proposes to organize the Court of Appeals and to direct the appointment of four judges for the court. The Constitution of Kentucky says 'the judicial power of this Commonwealth, both as to matters of law and equity, shall be vested in one Supreme Court, which shall be styled the Court of Appeals, and in such inferior courts as the General Assembly may from time to time create and establish.'

"The bill must be based upon one of two grounds, both of which have been assumed in argument in support of it. First: That the court has never yet been organized; and secondly, that the Legislature can, from time to time, so reorganize it as to turn the judges out of office and appoint new ones in their places. Each of those grounds I shall separately examine. As to the first, the fact is directly opposed to those gentlemen who assert the court has never been organized. The court was organized under the old Constitution,* and in full operation when the new one was made, which contains this clause: 'That all laws of the Commonwealth, in force at the time of making said alterations and amendments, and not inconsistent therewith, shall continue as if the said alterations and amendments had not been made' I will not detain the House by reading the different acts of the Legislature, adopted at different times, both under the old Constitution and new one, showing the complete organization of the Court of Appeals, defining its jurisdiction, times of holding court, number of judges, and a variety of other provisions. A gentleman in this House, who seems to sanction that doctrine, has been a judge of that court, received the public money, and discharged the duties of a judge; does he pretend his acts were so many acts of usurpation?† The Legislature, at different times, has authorized the publication of the decisions of the Court of Appeals, until, I believe, we have fifteen volumes, which have cost upward of $20,000, and we have just now, for the first time, through the sagacity of debtors, discovered we have never had a Court of Appeals, and that all the decisions of that court are void, although, since the year 1792, there have been at least thirty different gentlemen commissioned judges of that court, and the State has paid to the judges of that court, since the organization of the Government, nearly $100,000. Yet the whole has been a mistake. I think we may well exclaim that a second set of Daniels are with us.

"As to the second ground upon which efforts are made to sustain the bill—the Constitution ordains that there shall be a Court of Appeals. The jurisdiction of the court is appellate, and 'co-extensive with the State, under such restrictions and regulations, not repugnant to the Constitution, as may

* The *old* Constitution here referred to is that of 1792—the *new* one that of 1799.

† John Rowan.

be from time to time prescribed by law.' The Legislature can make any regulation to govern the court not incompatible with the Constitution. It can not give the court original jurisdiction, because the Constitution says its jurisdiction shall be appellate. It can not restrict its jurisdiction within less limits than that of the State, because its jurisdiction is co-extensive with the State. It can not say that the judges shall not be conservators of the peace throughout the State, because that jurisdiction is given by the Constitution. It can not give it another name, because its style is 'the Court of Appeals.' It can not say that the judges shall have no salary, because the Constitution says that they shall have an adequate compensation. It can not abolish the court itself, because the Constitution says 'there shall be a Supreme Court, which shall be styled the Court of Appeals.' They can not ordain and establish the court, because that is done by the Constitution; and the Constitution says that the Legislature can make 'no regulation repugnant to the Constitution.' It may be asked—what can the Legislature do with the Court of Appeals? I answer, it can say how many judges in the first instance that court shall have. It can add to the number fixed in the first instance, and, should there be a vacancy, it can reduce the number to the number of judges in commission; but it can not turn any out who are in commission, except by impeachment or address, because the judge holds his office during good behavior and the continuance of his court; and I have, I trust, shown his court can not be abolished. It can regulate the jurisdiction of the court, except that it must be appellate. It can regulate the times of the sessions of the court and fix the salaries of the judges, with this qualification, that the same must be adequate.

"The bill does not attempt to abolish the Court of Appeals, for, as I have said before, that can not be done; besides, if the same were attempted, the present bill does not accomplish the object; for if the Legislature had the power to abolish the Court of Appeals, it is a contradiction in terms to say a court is abolished because one section in a bill repeals a law regulating the court and the next re-enacts them. I would ask, gentlemen, when a bill is thus framed, is there any one instant in which the court ceases to exist? Surely not.

"The bill is unconstitutional in these particulars: It repeals all laws giving compensation to the present judges of the Court of Appeals; it directs the governor to appoint four new judges of that court, and allows but four judges in all to the court, where there are three judges now in commission.

"The friends of the bill admit the same is unconstitutional, repugnant, and contradictory in its provisions, unless, by the bill itself, the present judges are turned out of office; that is the pivot upon which its constitutionality must turn. The tenure by which the judges of the Court of Appeals hold their offices, as I have often said, 'is during good behavior and the continuance of the court,' subject to be removed by impeachment or address.

The present mode of proceeding is neither an impeachment nor address. It can not abolish the court, because the same is ordained by the Constitution, and if an abolition was attempted, it can not operate, because the same bill that destroys reorganizes; consequently, there is no one moment in which the court is out of existence.

"The convention acted unwisely, if what the friends of the bill contend for be true, to have guarded the independence of the judiciary so far as to require two-thirds to remove the judges by impeachment or address, and yet at all times leave them at the mercy of the Legislature. The fact that the convention required two-thirds, by impeachment or address, to remove the judges, proves conclusively to my mind that the new doctrine of declaring judges, clerks, and all other officers, out of office by a bill, has grown up since the adoption of the Constitution, and is no part thereof. It is asked, can not the Legislature abolish the courts? I answer, all the courts but the Court of Appeals and county courts. They are created and ordained by the Constitution. The other courts are either to be created or not, as the Legislature may choose; and if it be a matter of discretion with the Legislature to create, it would necessarily follow that they would have a right to alter, modify, or abolish at will and pleasure. The Legislature has the same power over all courts but the Court of Appeals and county courts that a convention would have over those two courts.

"What are the provisions of the present bill? Does it modify the jurisdiction of the court? Not to any considerable extent. It is in vain to say that it is a bill to either organize or reorganize the Court of Appeals. It is an unhallowed effort to create vacancies, that some of those sterling, insolvent patriots may get snug places with high salaries.

"Admit the doctrine of the gentlemen to be correct. Next year bring in a bill and call it a bill to reorganize the county courts. Repeal all the statutes now in existence giving jurisdiction to that court. Declare the justices, and clerks, and constables appointed by that court out of office. But in the same bill re-enact all the old laws, as is done in the present case. What, then, is the result, if what is now contended for be correct, that the judges of the Court of Appeals are out of office? It is that every justice in the State, the clerks and constables, are out of commission; and the governor, in filling the vacancies, can have an opportunity to reward those who voted for him. It is in vain that the justices may say, ours is a constitutional court and can not be abolished as long as the Constitution remains. It will be answered and said, so was the Court of Appeals. In vain will they exclaim and say, we hold our commissions during good behavior, unless we are removed by impeachment or address. The precedent established by the present bill will be relied on.

"The clerks may say, we hold our offices until we are removed by the Court of Appeals. So did the clerk of the Court of Appeals hold his by the

same tenure, and yet he is expressly legislated out of office. The constables may say, we can only be removed by the county court, and can not be thus hurled from our little offices. It will be answered that the sergeant of the Court of Appeals has been thus dealt by. Hold your peace! the Legislature can do no wrong.

"Pass the present bill and carry it into effect; you put every officer in the Government at the mercy of the Legislature; not to be removed by impeachment or address, but by an ordinary act of legislation, which can be passed by one vote more than one-fourth of the State. The people intended that the judicial department should be a check to the legislative, should that department attempt any unconstitutional act, any encroachment upon the great inalienable rights of the people. I would ask, how can that department be a check, if the other, by an ordinary act of legislation, can destroy it at will and pleasure?

"It has been asserted in argument that the Court of Appeals was a creature of legislation, and not of the Constitution, and that the same was originally brought into existence by the Legislature; consequently the Legislature had a right to abolish it. The Constitution ordained that there should be such a court, defined in part its jurisdiction, and gave name to the court. It left some of the details to be filled up by legislation; but although the Legislature might modify, from time to time, part of the regulations of the court, yet it does not thereby follow that the Legislature can abolish the court altogether; for if the court can be abolished for a moment, it can for as long a time as the Legislature may choose; and if the Court of Appeals can be abolished, so can every other court; and if all the courts can be abolished, the consequence is that the legislative department can annihilate, at will and pleasure, the judicial department, although the Constitution says that 'the powers of Government shall be divided into three distinct departments and each confided to a separate body of magistracy, to-wit, those which are legislative to one, those which are executive to another, and those which are judicial to another.' That the convention should imperatively have ordained some of the courts, and left others to legislative discretion, is very obvious. To have declared there should be three departments, and yet have ordained none of the courts, and left them all to be brought into existence or not, as the Legislature might choose, would have been acting unwisely, and not fulfilling in the Constitution what at the commencement of that instrument they declared they would do, to-wit, create three departments of Government. To have left the whole of the courts to legislative discretion, then the courts, which constitute the judiciary, would not have emanated from the people, and would not be a co-ordinate department of the Government, but the mere creature of legislation, and no department. The Constitution has thus ordained two courts, to-wit, the Court of Appeals and county courts. That the convention did not intend to regulate the whole judiciary system, I read-

ily admit. All other courts, besides the Court of Appeals and county courts, the Legislature may erect and establish at will and pleasure, and according to its discretion.

"Mr. Speaker, the remarks which I have this moment made are intended to show that neither the Court of Appeals nor county courts can be abolished by the Legislature; and that neither the judges of one court nor the justices of the others can be turned out of office, except by impeachment or address. And in support of that position I beg leave to read a part of the decision of the Court of Appeals of Virginia:

"'Judge Tucker: The independence of the judiciary results from the tenure of their office, which the Constitution declares shall be during good behavior. The offices which they are to fill must, therefore, be permanent as the Constitution itself, and not liable to be discontinued or annihilated by any other branch of the government. Hence, the Constitution has provided the judiciary department should be arranged in such manner as not to be subject to legislative control. The Court of Appeals, Court of Chancery, and General Court are tribunals expressly required by it; and in these courts the judiciary power is either immediately or ultimately vested.

"'These courts can neither be annihilated nor discontinued by any legislative act; nor can the judges of them be removed from their office for any cause except a breach of their good behavior.

"'But if the Legislature might at any time discontinue or annihilate either of these courts, it is plain that their tenure of office might be changed; since a judge, without any breach of good behavior, might, in effect, be removed from office by annihilating or discontinuing the office itself.'

"We have been told in argument that the Legislature, in effect, legislate men out of office when they make new counties out of parts of other counties. The Legislature has, by the Constitution, the right to make new counties, and in the formation of new counties they throw the local officers out of their old counties, and, by that means, if they do not remove in, but continue to reside out, they vacate, by the Constitution itself, their respective offices. 'All civil officers for this Commonwealth, at large, shall reside within the State; and all district, county, or town officers within their respective districts, counties, or towns.'

"It has, also, been urged in argument, that the quarter session and district judges were turned out of office by the act of 1802, which abolished those courts and constituted the circuit courts. That act can be no authority for the present bill, because the district and quarter session courts are created exclusively by the Legislature, and not by the Constitution; consequently, the Legislature can abolish them when it pleases.

"The act of Congress of 1802, abolishing the circuit court system established in 1801 under the administration of John Adams, has been relied on as a case in point. Instead of that act being an authority for the gentlemen,

I consider it as affording a strong argument on our side of the question. The Constitution of the United States contains the same provision that the Constitution of Kentucky does, and reads thus: 'The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as Congress may, from time to time, ordain and establish.' The court abolished by Congress was not a court established and ordained by the Constitution of the United States; but it was a court created by Congress exclusively, and which it had a right to create or not, at its discretion, and is precisely analogous to the act abolishing the quarter session and district courts. It is admitted in argument, in debates of 1802, that Congress could not abolish the Supreme Court of the United States because that was ordained by the Constitution. When the Republicans, in their arguments, conceded that they could not abolish the Supreme Court, the federal part of the House, who opposed them, contended that the tenure of office of a judge of the circuit and Supreme Court were alike, and that Congress could abolish neither. To that it was answered, that the Supreme Court was a creature of the Constitution, and the circuit court a creature of Congress, and over the latter Congress had power. Upon this part of the subject, I beg leave to refer to the arguments of some of the Republican members of Congress.

"General Jackson, of Georgia, here quoted third article, first section of the Constitution, and then proceeded:

"'Here, then, are two tribunals First, the Supreme Court, the creature of the Constitution, the creature of the people; the other, the inferior jurisdictions, the creature of the Legislature. And, notwithstanding the play of gentlemen upon the words *shall* and *may*, they are in meaning essentially different. The word *shall*, applied to the Supreme Court, is imperative and commanding, while the word *may*, applied to the inferior courts, is discretionary, and leaves to the Legislature a volition to act or not to act, as it sees fit.'

"General Mason, of Virginia—pages 57 and 58, in the debates—uses the following argument:

"'When I view the provisions of the Constitution on this subject, I observe a clear distinction between the Supreme Court and other courts. I am sensible that when we come to make verbal criticism, any gentleman, of a sportive imagination, may amuse our fancies by a play upon words. But this is not the way to get rid of a genuine construction of the Constitution. With regard to the institution of the Supreme Court, the words are imperative; while, with regard to inferior tribunals, they are discretionary. The first *shall*, the last *may*, be established. And surely we are to infer from the wise sages that formed that Constitution, that nothing was introduced into it in vain. Not only sentences, but words, and even points, elucidate its meaning. When, therefore, the Constitution, using this language, says a Supreme Court *shall* be established, are we not justified in considering it as

of constitutional creation? And on the other hand, from the language applied to inferior courts we are equally justified in considering their establishment as dependent upon the Legislature, who *may*, from time to time, ordain them, as public good requires? Can any other meaning be applied to the words "from time to time?" And nothing can be more important on this subject than that the Legislature should have power, from time to time, to create, to annul, or to modify, the courts as the public good may require; not merely to-day, but forever, and whenever a change of circumstances may suggest the propriety of a different organization. On this point there is great force in the remark of the gentleman from Georgia, that among the enumerated powers given to Congress, while there is no mention made of the Supreme Court, the power of establishing inferior courts is expressly given. Why this difference, but that the Supreme Court was considered, by the framers of the Constitution, as established by the Constitution; while they considered the inferior courts as dependent upon the will of the Legislature.'

"It has been urged that the Constitution does not ordain and establish the Court of Appeals, because it uses the words 'shall be vested in one Supreme Court, which shall be styled the Court of Appeals,' which is only directory and not mandatory to the Legislature. The Constitution uses the same mode of expression as to the legislative and executive departments. 'The legislative power of this Commonwealth shall be vested in two distinct branches.' 'The supreme executive power of the Commonwealth shall be vested in a chief magistrate, who shall be styled the governor of the Commonwealth of Kentucky.' The same mode of expression is used in the Constitution of the United States. All human ordinances and statutes must contain imperative words; it is only for Deity to will a thing, and it is so; such as 'let there be light, and there was light.' Man must ordain, must institute; and mere willing will not do.

"Great reliance has, by the gentleman from Mercer (Mr. Daviess), been placed upon the act of 1813, which reduced the number of judges of the Court of Appeals from four to three. In answer to that, I remark, that at the time the law of 1813 passed, there were but three judges in commission. Judge Owsley's commission was *pro tem.*, and had expired.

"Mr. Speaker, although I have admitted that all the courts, except those ordained by the Constitution, can be abolished if the honest and *bona fide* intention of the Legislature is to get clear of a useless court, or to alter or modify that part of the judiciary system; but, if that be not the object, and their only intention is to turn men out of office and put others in their stead, I say that it is an indirect violation of the true spirit and intention of the Constitution; it is a gross and flagrant abuse of power. Upon this part of the question I will call the attention of the House to what John Randolph said in the debates upon the judiciary in 1802. It was in relation to abolishing the circuit courts of the United States, which were analogous, as I have

said before, to our quarter session and district courts: 'Mr. Randolph: I agree that the Constitution is a limited grant of power, and that none of its general phrases are to be construed into an extension of that grant. I am free to declare that if the intent of this bill is to get rid of the judges, it is a perversion of your power to a base purpose; it is an unconstitutional act. If, on the contrary, it aims not at displacing one set of men, from whom you differ in political opinion, with a view to introduce another, but at the general good by abolishing useless offices, it is a constitutional act. The *quo animo* determines the nature of this act, as it determines the innocence or guilt of other acts.'

"It is asked, is it not competent and within the power of the Legislature to repeal any law or resolution they may pass? That I will concede as a general proposition, although it is not universally true. But it still does not follow that all officers who have been commissioned or installed into office, in part by virtue of such law or resolution, are out of office. By a resolution of both Houses, a time is fixed for the election of a senator to Congress; after the election is over, can we turn out the senator by repealing the resolution? Surely not. The State Legislature by law lays off the State into congressional districts, regulates the whole formality and mode of election; can we turn our members of Congress out by repealing the law? None will be bold enough to claim such power. The form and manner of our own elections and that of the governor is in part regulated by acts of the Legislature. Will a repeal of those acts turn us out of this House and break the governor? The true distinction is this: When the office is created by law, a repeal of the law turns the officer out; where the office is created by the Constitution, and details of electing the officer are left to the Legislature, the repeal of the laws directing the manner of filling the office can not disfranchise the officer.

"Although the number of judges of the Court of Appeals is fixed by an act of the Legislature in the first instance, yet when they are nominated by the governor and approved by the Senate, the tenure by which they hold their office is not then regulated, nor can it be regulated, by an act of the Legislature; but the same is governed by the Constitution itself, which is during good behavior and the continuance of the court; and when using the word court, I beg to be understood as not meaning the judges of actual session, but the court as a component part of the Government of Kentucky; for although all the judges might die or be removed, yet the court would still be in existence. If the present mode of breaking our judges were constitutional, why did the Constitution require the causes of the address to be spread upon the journals? Why did it point out how every officer in the Government was to be removed, if it can be accomplished in this way?

"If this law be constitutional, then I say that a partisan Legislature and governor can, in an act no longer than two sections, turn every officer in Government out. The first section to repeal all acts and parts of acts regu-

lating the filling of every office in the legislative, judicial, and executive departments of Government, and to declare all officers in Government out of office, and the next section to re-enact the same laws and to direct the governor and respective courts to appoint new officers.

"A member from Washington county has declared that the Legislature has the right to pass this law, because the power is in their hands. The gentleman seems to confound right and power, and to make them convertible terms. No argument is more fallacious. Right does not always follow power. The despot or tyrant has the power to take my life, but he has no right. The highway robber has the power to assassinate me for my money, but I hope the day has not yet come in which his right will be vindicated.

"We will suppose for a moment that I have been incorrect; that the act of 1820 is constitutional, that the decision of the court is erroneous, and that the Legislature has a right to pass the present bill. I would still ask this House to pause and inquire, is the same necessary and expedient? Will you not allow the judges to decide upon a constitutional question? Is it not their duty when the question is brought before them? And will you turn them out of office for doing their duty, because you may suppose their opinion is wrong? Are our judges to be removed whenever the Legislature may differ with them in opinion? If that be the tenure by which they hold their offices, then I say it is a brittle tenure, and our judiciary, instead of being a safeguard, a shield, and buckler, to defend the property, liberty, and life of the citizen, is a mere mockery.

"Mr. Speaker, I deny that the relief system ever was just, equitable, and politic. If I am indebted to a man, it must be either in consideration for his money, property, or labor; and is there any justice or equity in the Legislature stepping in and saying I shall have a longer time to pay in than was agreed between us, unless he will take half the amount? If men are made to pay their debts, how is the State injured? It is only a change of property from the wrongful possessor to the rightful claimant. Is this kind of legislative interference necessary to keep a country out of debt? You might as well fill the pockets of a spendthrift to make him more economical. There is no way to keep a country out of debt but to make debtors pay, and then debts will not be contracted without the means of payment; and when they are contracted the debtors' efforts will be to be punctual in the payment. Then we will see that melancholy and afflicting state of things which we witness every day, that men get in debt, and instead of adopting the ways and means of payment, their whole efforts are directed how, with the assistance of the Legislature, to cheat and defraud their creditors.

"But say, for a moment, that the delay system was necessary, or individual sacrifices would be made. Yet, those sacrifices had better be made than that confidence between man and man should be destroyed. No association of men can exist, in the nature of things, without confidence in each other.

"The credit of a man or State is equal to his or its capital. The moment you destroy punctuality in payment of debts, and confidence between men, you withdraw from the property of the country that portion of its capital which consists in its credit. This is one of the great causes of the extraordinary depression in the price of all property, and the apparent scarcity of money.

"There is yet a reason against this relief system, which, with me, is paramount to all others, and outweighs everything that can be alleged in its favor. It has injured the reputation of this State abroad, and nearly destroyed the morality of the country. All governments, but that of a republic, are governments of force, and by force they are preserved. A republic is based upon the will of the people; and that will is kept alive, sustained, and directed by the morality and intelligence of the people. The moment the morality of the country is destroyed, the republic is gone.

"Can any person deny that the honesty and morality of the country have been greatly impaired and broken in upon by this relief system? You tell men to be dishonest by telling them that they shall not be compelled to pay their debts; you render them dishonest by destroying the confidence between them; you spread the mischief wider and extend the evil further by legislating exclusively for them, and abusing their creditors; you are about to put a finishing hand to the corruption of the country by endeavoring to bring the administration of the laws into disgrace and contempt. The officer of government, who administers them, you reproach and revile. What is the result of this conduct? It is to superinduce an opinion among the people that there is a total and entire irresponsibility to all law, order, and government. Hence, we see, or hear, every day of the most daring and most atrocious murders and robberies. From the highest to the lowest in society men are turned out cut-throats and assassins. I hazard nothing in asserting the fact to be that more flagitious and enormous crimes have been perpetrated within the last two years than for twenty years before. Why all this? Because men are taught to contemn good order, and to be regardless of all subordination to the law. Those bonds of civil society which bind us together have been burst asunder, and we are about to revert back to a state of original barbarism. Nothing keeps the government from falling to pieces but our State being a member of the United States.

"These arguments of mine are bottomed upon the supposition that the relief system is constitutional, and that the decision is wrong. Yet, I have endeavored to prove the laws unwise, unwholesome, and impolitic. But I do not wish to be understood as admitting that the new law is constitutional, or that the decision is wrong; for I do now affirm, as I have ever done, that I believe the law unconstitutional, unjust, and inexpedient.

"For the sake of argument, we will suppose further that it is a matter of doubt as to the policy, expediency, and constitutionality of the law; then I

ask the gentlemen who support the bill, ought they to push it through the House? I ask them further, are their minds free from doubt? Have they been so well drilled that their drilling with so many men in and out of this House, in opinion upon its constitutionality, has, as yet, produced no hesitancy?

"What have the Legislatures of our sister States done when their courts have decided laws unconstitutional? Did they remove the judges or abolish the courts? I answer, neither.

"The Yazoo purchase of Georgia was effected by bribery and corruption. The next session the sale was, by the Georgia Legislature, declared void. Georgia, after that, sold and transferred the land to the United States. The purchasers proposed a compromise. Congress refused upon the ground that the original purchase was void, and that the Legislature had so declared it by a subsequent act. After all this had been done the Supreme Court, in the case of Peck and Fletcher, decided that the last act of the Georgia Legislature was void because it impaired the obligation of the contract in the first purchase. When this decision was given what did Congress do? Did it remove the judges or abolish the court. Neither; but acquiesced in the decision, and paid the company five millions of dollars for a compromise.

"If we turn the present judges out, who can we get that will better fill their places? What kind of men are we to have? Who will submit to the humiliation of giving in their confession of faith before they are appointed? For it is certainly intended to appoint none who will not swear allegiance to the doctrine of the new school. They certainly can have no pride of character—no conscious self-worth.

"Can we get men of more law-learning and better morals? I doubt it very much. Can we get men whose judicial opinions will be more favorable to the settlers and occupants of lands? Certainly not; and, in all probability, not so much so. The present judges in opposition to the Supreme Court of the United States have sustained our occupying claimant laws, our limitation laws, and the doctrine in relation to writs of right. In the selection of new judges we have some risk to run. I have heard men spoken of as judges who I know have heretofore been against our limitation laws.

"We have been told that the judges have insulted the people by calling them fools, idiots, and liars. There is not one word of truth in that assertion. The judges have been called 'three kings,' and it has been said that they wished to usurp the Government and tyrannize over the people. Who ever heard of judges destroying a republic? They are but few in number. A faithful discharge of their official duties makes no friends, it gives no influence. They have no patronage; the purse and sword of the State are wielded by the other departments.

"All republics have gone the same way; men of daring courage and unbounded ambition have played the demagogue by abusing the honest

officers of government, sounding alarms and crying out to the people, we are oppressed by those who administer the Government, pretending a glowing love and ardent devotion to the people. This course of conduct breaks the harmony of the Government, produces discord, confusion, riots, and tumults; still advancing, step by step, the climax is capped by pushing the people into blind anarchy and wild uproar. In this state of things the Government is a prize to the first bold and daring adventurer. The history of all republics proves this assertion. Athens had her Pisistratus; Rome, her Cæsar; England, her Cromwell; and France, her Bonaparte.

"There has been one answer given to all we can say on the subject; that is, the people have expounded the laws and returned their verdict against the judges. This I deny. But suppose it was a fact; I never want a judge on the bench who, before he decides, will inquire either as to the power and influence of the litigant parties, or as to the popularity of the cause, or of the law relied on. I want no man on the bench who wishes to know before he gives his opinion, what is the state of the weather; whether it is serene and uncloudy, or stormy and tempestuous. In fact, deliver me from the judge who, before he decides on my property, liberty, or life, asks what the people have got prepared for his dinner?

"The people have given their verdict, and it is in favor of the judges. The only question submitted to the people was, to remove the judges by address. The people have decided. There are not two-thirds for their removal; therefore, the Constitution pronounces the judgment of acquittal.

"My friends in their remarks have complained about midnight caucuses; I have neither blame nor censure to bestow on that account. Jefferson, Madison, and Monroe were brought into office by a caucus; and I think if Mr. Clay and his friends, last winter, had gone into caucus with Crawford and his friends, those gentlemen, who have been persecuted and hunted down by the administration, would not have been where they are now.

"In the British Parliament, the opposition is marshaled by concert. The administration arrays its forces. There we see the prime minister, as we have in part done here, leading on his placemen, his pensioners, the household troops, the mercenaries, the Swiss guards, and, on the wings of this formidable phalanx, we see our little courtiers who bask in the sunshine of executive favor and patronage.

"I will, Mr. Speaker, solicit the attention of the House, a moment longer, until I notice the amendment of the gentleman from Hardin. I will vote for that amendment out of a spirit of compromise and conciliation. In all great political questions we ought to yield something, and meet members upon half-way ground.

"If it be only to produce a change of decision in the Court of Appeals, this amendment effectuates that object, because it requires the whole court to concur before a law shall be decided unconstitutional. The same mode

of selecting the one judge, that must be adopted in selecting the four, is all that is requisite.

"Permit me, Mr. Speaker, to beg, beseech, and conjure the members of this House to use their best effort to settle this question without pushing matters to extremities. Our common country is distracted with this question. Party spirit rages with great violence. The State is nearly divided as to numbers and talents. A victory ought not to be desired by either party. The pride of victory on the one side, and the mortification of defeat on the other, widens the breach between them; and, instead of restoring peace, harmony, and concord to the country, increases that bad state of feeling which already too much exists. We are all members of the same political family; let us bury the hatchet and brighten the chain of peace; embrace as brothers, and then, in a state of good feeling, turn our attention to internal improvements and the amelioration of our common country."

The closing scenes of the debate were marked with tumult and disorder. It was complained that the governor and others (not members) were on the floor of the House exerting their personal influence for the passage of the bill. "The scene," said an eye-witness, "resembled a camp-meeting in confusion and clamor, but lacked its holy impulses."* The bill passed like a whirlwind. The result, however, showed that in debate the advantage had been with the Anti-Relief leaders. Galloway, Cosby, Martin Hardin, Triplett, and Watkins had voted for the address. On the bill to reorganize, Galloway did not vote, and the others named voted against it. An intelligent writer has observed very truly that in these debates the Relief party received its death stab. The bill was promptly approved by the governor, and (as its friends supposed) became a law. Thus, for the first time in this State, was witnessed an attempt by one department of government to overthrow a co-ordinate department. The real purpose of the majority of the Legislature, it need hardly be remarked, was to reorganize the court, not because its existing organization was defective, but solely to remove judges who differed with the Legislature as to the just limit of the law-making power.

During this period partisan feeling grew exceedingly bitter. Mr. Hardin spared neither sarcasm, wit, nor ridicule. So exasperated did one Haskins become that on one occasion, armed with a hickory bludgeon, he attacked Mr. Hardin, as he emerged from the capitol, inflicting personal injury. This was regarded as an amusing episode by "Relief" partisans, and celebrated in cotemporary doggerel:

> "A hickory stick and a Haskins lad,
> They make the old tom-cat so mad."

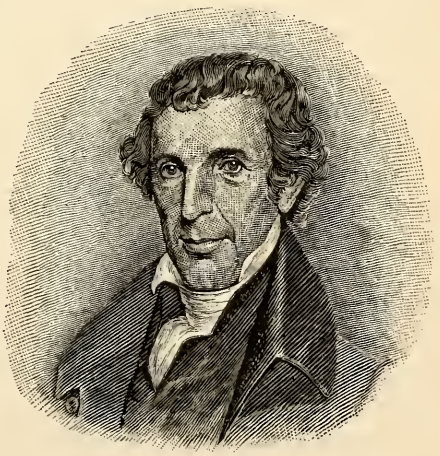
* The late Chief-Justice George Robertson.

CHAPTER XII.

A CASE AFFIRMED.

ON January 10, 1825, Governor Desha appointed for chief-justice of the new Court of Appeals William Taylor Barry, and for associate justices James Haggin, John Trimble, and Benjamin W. Patton. Shortly afterward, Patton died, and Rezin H. Davidge was appointed in his place.

Of Barry mention has already been made. His talents were those of an advocate, rather than a jurist. He shone at the bar, and was notably skillful as a criminal lawyer. On the bench, he was at a disadvantage. Haggin was a prominent member of the Lexington bar, and enjoyed an extensive practice. He, more than any of his associates, suffered from the partisan heat of the period by assaults on his private character. So violent were these that he professed to fear assassination. John Trimble was born December 4, 1783. He was a brother of Robert Trimble, who died while a justice of the Supreme Court of the United States, and of whom Judge Story said: "Men might differ with respect to the rank of other lawyers, but all admitted that no one was superior to Robert Trimble in talents, in learning, in acuteness, in sagacity." But the relationship existing between these brothers was of blood only, not of genius. The educational advantages of John, in early life, were inferior to those enjoyed by his distinguished brother. When nineteen, he was secretary of Robert Evans, governor of Indiana Territory. After this, he studied law with that renowned preceptor, George Nicholas, of Lexington. He practiced law at Paris from 1807 to 1816. He was then appointed Circuit



WILLIAM TAYLOR BARRY.

judge, upon which he removed to Cynthiana. His ability was questioned by some while he was acting as Appellate judge. This may have resulted from partisan rancor, or because (as Collins says) only those who knew him intimately "suspected the general variety of his knowledge and his severely-critical judgment." Davidge's sole claim to distinction seems to have been his appointment to the vacancy caused by Patton's death. These men did not measure in ability with the bench of the "old" court. The danger of such a comparison seems to have been overlooked by the Relief governor. The Legislature also committed another serious mistake to the party detriment. The majority chose their leader, John Rowan, United States Senator. They thus not only lost the benefit of his personal leadership, a loss that was irreparable, but his influence was diminished by the charge that ambition had been his spring of action.

The success of the Relief party (henceforth known as the New Court party) did not bring tranquillity to the State. The new court fell into an undignified struggle with Achilles Sneed, clerk of the old court, for possession of his records. Bloodshed was narrowly avoided. The records were only obtained by violence. For this, the grand jury of Franklin county indicted the new court, its judges, and officers. The grand juries of several counties found indictments against the majority in the Legislature for passing the reorganization act. A motion to admit Madison C. Johnson to the Woodford bar, on faith of license granted by Boyle and Owsley, judges of the old court, after the new court was established, caused a heated debate of a day or so in duration. The circuit judge, Jesse Bledsoe, evaded the question, and admitted Johnson as a matter of courtesy.

Meetings were held throughout the State, some to approve and others to condemn. Addresses were published by the minority in the Legislature, by the old court judges, and by Sneed, its clerk. Pamphlets, discussing the merits of the controversy, were published, and the newspapers were burdened with the theme. Barry and Haggin were charged with various irregularities affecting their integrity. Mills was denounced because, while Appellate judge, he had rendered some service as counsel in a case in which he had been attorney before his appointment. Barry, after he was commissioned, but before he was sworn in, defended a son of Governor Desha for highway robbery and murder. Mills went armed to prayer-meeting to defend himself, as he claimed, from apprehended violence. All these topics were extensively discussed. The old court kept open

for business. Some appealed to it, some to its rival. The inferior courts and the legal profession were in a state of sore perplexity, from which no partisan logic or enthusiasm would relieve. "I should be glad," wrote Clay to Crittenden, in regard to some cases in the new court relating to the Morrison estate, "I should be glad if they were anywhere else, but, being there, I must beg that you will not allow the estate to suffer for want of counsel."

Mr. Hardin's speech in the Legislature had furnished the inspiration of many co-workers on the stump. Judge Trimble, in taking a mortgage on a poor debtor's property, had included the wife's side-saddle. The popular uses of such a fact did not escape Hardin's observation. He had unearthed, in the Fayette Circuit Court, the case of Williamson vs. Haggin (the defendant being the new judge). Haggin had contracted to buy Mrs. Williamson a house and lot, but stipulated that he was "not to be hastened." He contended that he was entitled to his whole lifetime in which to perform his contract. Hardin's wit and ridicule found in this a theme suiting his genius. "Haggin must be hastened" became a household phrase. The Roman Catholic Bishop Flaget, of the Diocese of Bardstown, was exceedingly influential not only among his co-religionists, but among all of every faith with whom he came in contact. Being of foreign birth and a faithful churchman, he paid little attention to the political commotion about him. Mr. Hardin was anxious to enlist him, if ever so slightly, among the friends of the old court. He argued the matter with the good bishop, appealing to his conservatism, representing the new court as an infringement and innovation on the fundamental law. Overcome, at last by these arguments: "I am for the old court," said the bishop. "I am opposed to all innovations from Martin Luther down."

The New Court party, meantime, hastened to its fall. At the election of 1825, sixty-five Old Court and thirty-five New Court representatives were chosen. The Senate was evenly divided. This decided majority was partly due to the efforts of the Old Court party, partly to the errors of the New Court party, and, in no small degree, to the inherent weakness of the latter. It naturally sank with the ebbing tide of feeling on which it first arose. The Old Court party had not only been successful in the elections, but had adhered to its policy of sending strong men to the Legislature. General Thomas Fletcher, of Bath; Daniel Mayes, of Christian; M. P. Marshall, of Fleming; Elijah Nuttall, of Henry; Samuel H. Woodson, of Jessa-

mine; J. R. Underwood, of Warren; and W. B. Blackburn, of Woodford, were among the distinguished names of the Old Court party added to the roll of the House. Mr. Chapeze, of Nelson, was succeeded by James Allen, Esq.

The Legislature convened, November 7th, in the midst of great excitement. Solomon P. Sharpe, the attorney general, had been elected to the House, from Franklin, as a New Court man. The contest preceding his election had been marked by a degree of heat and bitterness exceptional in the asperity of those times. He was strong with his party, however, a superior lawyer, and an accomplished man of affairs. With the aid of his personal popularity, his friends hoped to elect him speaker. On the preceding day, a large number of the members had already arrived at Frankfort. Every stage and steamboat brought fresh accessions. On the chief roads, by twos or in larger numbers, members came horseback. The capital was alive again, after months of torpor. In this busy gathering, Colonel Sharpe was a prominent figure. He was justly regarded as the new leader of the New Court party. On Monday morning (the 7th), at an early hour, Frankfort was thrilled and appalled as never before. During the preceding night, Colonel Sharpe had been called to the door of his residence and stabbed to death by an unknown assassin, who had escaped in the darkness. His devoted wife, astounded and crushed, sank into insensibility when she realized her terrible bereavement.

All questions were dwarfed and all animosities silenced in the presence of this ghastly tragedy. The House met and organized. The New Court party put forward no candidate for speaker. George Robertson was unanimously chosen. The first business was a resolution requesting the governor to offer three thousand dollars reward for the detection, apprehension, and conviction of the assassin of Sharpe. Resolutions were also adopted reciting that "Kentucky and its Legislature are called upon to mourn the loss of one of their ablest and most distinguished citizens." Certain members from the southern part of the State, arriving by the Shelbyville turnpike during the forenoon, were not only shocked to hear of the assassination, but surprised that it was not mentioned by Jeroboam Beauchamp, a young lawyer of Warren county, whom they had encountered and talked with a short distance from the capital. Hearing this, Mr. Hardin, without a moment's hesitation and on this single fact, pronounced Beauchamp the assassin. His arrest followed, and the

sequel verified the assertion. He was tried and convicted, and sentenced to death.

Beauchamp had been instigated to the deed by his wife, with whom, it was charged, Sharpe had maintained improper relations. The paternity of a bastard being ascribed to him in the legislative canvass, his friends sought to repel it by showing the child of negro blood. This circumstance actuated the woman to revenge, and she only married Beauchamp on his promise to kill Sharpe. After Beauchamp's conviction, and shortly before execution, he and his wife attempted suicide. The latter succeeded, but Beauchamp, in a semi-conscious state, suffered the penalty of the law.

A bill was shortly introduced and passed the House repealing the reorganization act. In the Senate the vote on the bill was a tie, and Lieutenant-Governor McAfee voting against it, defeated it. After this a joint resolution was adopted by the General Assembly providing that "a committee of six from each house be raised for the purpose of conferring and devising such practical measures as to them shall seem most expedient, in order to settle the difficulties in relation to the Appellate Court." From this committee, as well as from others, came various propositions of settlement. To state them, or any of them, would reflect no credit on the proposers. An unpleasant suspicion of trickery was around them all. All were rejected, and matters remained as they were.

The new court sat during the spring term, and part of the fall term of 1825. In October it ceased to decide causes, although it continued its sittings a short while longer. After the Legislature convened that year, Blair, the clerk, closed his office and refused either to surrender the records or permit either litigant or counsel to have access to them. Thereupon the House passed a resolution declaring that it was the duty of the old court, through its sergeant, to regain possession of its records. On this Blair guarded his office with an armed force. The Legislature adjourned after a session of six weeks. The majority in the House published a florid address "To the Freemen of Kentucky," in which old court woes and new court sins were elaborately enumerated. "On you," said the address, "hangs the fate of the Constitution. Having done all that we could, we submit the issue to God and the people." Mr. Hardin was one of the signers, but to George Robertson belongs the credit of authorship.

Although maintaining a precarious existence, the new court was doomed. The year 1826 witnessed the final and complete triumph of

the Old Court party. In both branches of the Legislature its majority was decided. That year, James Clark, the circuit judge who first declared the replevin law unconstitutional, was elected to Congress from the Ashland district, by nearly one thousand majority. During the legislative session that followed an act was passed declaring to be in full force all acts pretended to be repealed by the reorganization acts. The bill was vetoed by Governor Desha, but passed, notwithstanding, and became a law December 30, 1826. The force under Blair laid down its arms, and that warlike functionary surrendered the records of which he had made conquest. Thus formally and finally ended this memorable contest.

During its existence, the new court rendered seventy-two opinions —the first April 19, 1825; the last October 28, following. Of these Haggin delivered twenty-seven, Trimble seventeen, Davidge fifteen, Barry thirteen. Although preserved in 2 Monroe's Reports, they have always been regarded as the apocrypha of Kentucky law. Deprived of extrinsic authority, their merits have never given them currency. It is stated by Collins that the old court sat and decided cases simultaneously with the new. This statement is, perhaps, inadvertent. At all events, no opinions were published by the old court during the period the new court sat, except for about two weeks. The reports of old court decisions show an interval from December 15, 1824, until October 15, 1825, during which no opinions were delivered by it. The last opinion of the new court bears date the 28th of October. The old court resumed its regular sittings December, 1825, although the reorganization act was not repealed for more than a year afterward.

Judge Boyle resigned as chief-justice November 8, 1826, to become Federal district judge for Kentucky. This position he held until his death, January 28, 1835. "As a lawyer," said Judge Robertson, "he was candid, conscientious, and faithful; as a statesman, honest, disinterested, and patriotic; as a judge, pure, impartial, and enlightened; as a citizen, upright, just, and faultless; as a neighbor, kind, affable, and condescending; as a man, chaste, modest, and benignant; as a husband, most constant, affectionate, and devoted." Judge Mills continued in office until 1828. He then resigned and resumed practice at Paris, in which his success was commensurate with his wishes. An apoplectic stroke ended his life December 6, 1831. Although kind to those with whom he associated, he sought public approval by inflexible integrity rather than by popular arts. His success in the

practice rested on his profound knowledge of the law. He was a clear and forcible speaker, but a lack of good voice detracted from his oratory. Judge Owsley resigned simultaneously with Judge Mills. His subsequent life was in part unpleasantly interwoven with that of Mr. Hardin, and will be referred to in future pages. In concluding the subject, it may be observed that the influence of the old and new court struggle did not end with the overthrow of the latter. Said Duff Green in a letter dated Louisville, September 6, 1826, to Governor Edwards, of Illinois: "The old and new court question is already lost in this State. * * * The new court men, with scarce one exception, are for Jackson, and the strong men of the old court party are more than divided in his favor." Why the new court men as a body took refuge under the banner of the "old hero," is one of those political problems for which many reasons can be given, yet none with entire assurance. A quarter of a century later, during the discussions attending the proposition for the constitutional convention of 1849, it was observed by an intelligent writer (but ardent Whig) that "the political parties in our State took the form and organization which they have retained with little variation ever since, in the fierce and bitter struggle growing out of the attempt of the Legislature to interfere with the contracts of individuals, and the firm resistance of the courts to this interference." * * "Whatever names parties may have worn since, whatever questions may have agitated or excited them, the lines then drawn have never been obliterated, and never will be. They are the eternal lines which distinguish the great antagonistic principles in society, which divide the constitutional conservative on the one side from the Jacobin and the radical on the other."*

In so far as this writer traces the organization of parties he is in the main correct. However mistaken it was, still it is unjust to attribute to the New Court party the principles of Jacobinism or radicalism. Republican government was a newer institution then than now. The principle that the majority should rule was unthinkingly accepted as the essence of liberty. The Legislature represented the people, and a majority in the Legislature represented a majority of the people. Such was the argument. The division of the powers of Government into co-ordinate departments was not practically understood. Constitutional limitations on the power of a legislative majority seemed restrictions on Republican freedom. Questions arising on the distinction between the remedy and obligation of contracts have ever been difficult and vexatious to the learned. That a party, respectable in

* An anonymous writer in "Old Guard."

numbers and intelligence, should have fallen into error as to such questions, or as to the just limit of legislative power, at a period when the burdens of the debtor class were ruinous, furnishes no just ground to charge its members with lack of political integrity, or with being intentionally unfaithful to the cause of constitutional government. Referring to the "old and new court" controversy, Mr. Hardin, on a memorable occasion long afterward, said: "I was in the battle from the commencement to the end. I devoted my time in the cause of the old judges. I spent my money and shed my blood at the capitol door in its defense."

CHAPTER XIII.

JACKSONIAN LIGHTS AND SHADOWS.

IT may well be believed that for a score of years immediately after 1824 the career of every prominent politician in the United States was materially affected by the advent into political life of a single individual—and it is positively asserted to be so as to those of Kentucky. Ordinarily, nothing is more idle than to speculate as to the course of events, had certain prime causes not transpired. But in the year 1824 nothing seemed more a matter of course than that John Quincy Adams should succeed himself, or whether he did or not, that Henry Clay would succeed him. The history of the twenty-five years preceding assuredly warranted the assumption. Jefferson had been secretary of State under John Adams, and had succeeded him in the presidency. Madison had been secretary under Jefferson and succeeded him. Monroe, who had been secretary under Madison, succeeded him to the presidency.* John Quincy Adams had been secretary under Monroe and he, likewise, succeeded his chief. Mr. Parton calls it the period of the "secretary dynasty." Clay being secretary under Adams, why should he not also attain the presidency?

Clay had represented his country with great honor at the peace of Ghent. His career in Congress had been brilliant—eclipsing all rivals. He had been the friend and supporter of the preceding administrations and enjoyed their favor. He had frequently been chosen to the speakership of the House of Representatives, and acquitted himself always with credit. His talents and patriotism were conceded on all hands. The causes that helped Jefferson, Madison, Monroe, and John Quincy Adams to the presidency seemed to have lost none of their force in his favor, but, on the contrary, pointed to him as the heir apparent. Yet, with the precedents of a quarter of a century and all these auspicious omens, the advent of a single man reversed all precedents and turned the tide of events. That man, it is needless to say, was Andrew Jackson. Why this was so is one of the curious phenomena of political history.

* Mr. Hardin, in February, 1816, in a speech in Congress, referred to Mr. Monroe as the "heir apparent."

What position, it may be asked, did General Jackson occupy at that period in the esteem of the American public? It is remarked at the outset that the estimate of him at that day was wonderfully revolutionized by subsequent events, and the recollection of these latter must be laid aside in order to see him as he appeared when his shadow first fell across the luminous pathway of Henry Clay. West of the Alleghenies the population was sparse and the country new. The ability of Clay and other Kentuckians was regarded as somewhat phenomenal by the Virginians, and altogether so by the inhabitants of the Eastern States. The wise men came from the East, and that circumstance or some other equally occult has always created an impression to the eastward that he on whom the sun first rises has peculiar gifts not vouchsafed to those on whom his beams fall later. Jackson lived in a semi-civilized region called by Peter Parley the "far west," where it was supposed to be difficult to calculate latitude or longitude. When later intercommunication had somewhat overcome the idea of remoteness, another descriptive term succeeded—"the backwoods."

Jackson derived no advantage in the older States from his Tennessean residence. In 1805 Aaron Burr described him as "once a lawyer, after a judge, now a planter, a man of intelligence, and one of those prompt, frank, ardent souls whom I love to meet." After this Jackson had achieved his military renown. His service and success at New Orleans eclipsed all else that he had accomplished. His duels and the lamentable affair of the executions of Arbuthnot and Ambrister diminished his glory, yet by no means obscured it. He was conceded by all to be brave, and the victory over Packenham was an exceedingly gratifying event to the American people. Yet Jackson did not reach the standard then applied to presidential aspirants. Thomas Jefferson had filled the measure of his countrymen's conception of a statesman. He was scholarly, wise, dignified, and experienced in State craft. As a ruler he had compared favorably with the head of any nation in modern or ancient times. Such a contrast was unfortunate for Jackson. Yet there were those in that day as at all times who were not content with the existing order of things. The great army of the opposition was already in the field whose mission was not so much to elevate some one, as to pull some other down.

The inquiry then was, as it has always been with that political congregation, not who is most competent, or who is really preferred, but rather who is most available. It was the idea of availability that brought Jackson to the front, rather than because he was of presiden-

tial stature. He himself said in 1821, alluding to a suggestion of his candidacy, "Do they think that I am such a d—d fool as to think myself fit for the presidency of the United States?" But at the approach of the campaign of 1828 there was opposition to Clay, opposition to New England, opposition to the Virginia junta, and opposition to Calhoun. These odds and ends sought a nucleus and found it in Jackson. He had positive strength in the West. His soldiers were scattered all over it. His military glory was especially brilliant in that quarter, and there his sins of omission and commission were looked upon indulgently.

In the older States his adherents were of the opposition, which was for Jackson or any one else to win. Mr. Clay had resented Jackson's candidacy in 1824 as a personal grievance. He claimed the presidency for the West, and Jackson came in for a full and equal share of all that claim amounted to. Jackson divided the West and seduced Clay's neighbors from their allegiance. The latter regarded it a dangerous precedent to elevate a military chieftain to the presidency merely because he had won a great victory. "I can not believe," said he, "that killing two thousand five hundred Englishmen at New Orleans qualifies for the various difficult and complicated duties of the chief magistracy." But Mr. Clay underestimated the personal ability, the political sagacity and power with the people of General Jackson. He entertained a contempt for him. He sneeringly called him the "hero" on all occasions. Between the two there soon arose irreconcilable and irrepressible conflict. From the very outset this conflict was beyond pacification. One or the other had inevitably to go down. Jackson and Adams were the candidates in 1828, but the defeat was Clay's.

"The election of Adams by the House of Representatives," says Mr. Baldwin, "was turned to account, with all its incidents and surroundings, with admirable effect by General Jackson. No one now believes the story of bargain, intrigue, and management told upon Adams and Clay; but General Jackson believed it, and, what is more, made the country believe it in 1825. Adams was an unpopular man, of an unpopular section of the country. Crawford's friends were as little pleased as Jackson's with the course affairs took. The warfare upon Adams was hailed by them with joy, and they became parties to an opposition, of which, it was easy to see, Jackson was to be the beneficiary.

"Clay's ambition or incaution betrayed him into the serious, and, as it turned out, so far as concerns the presidency, the fatal, error of accepting office—the first office—under the administration which he called into power.

It was, in all politic respects, a most inexcusable blunder. The office added nothing to his fame. It added nothing to his chances for the presidency. He was, on the contrary, to share the odium of an administration at whose head was a very obstinate man of impracticable temper, coming by a sort of bastard process into office, bearing a name which was the synonym of political heterodoxy, and whose administration was fated to run a gauntlet, from the start to the close, through a long lane of clubs, wielded by the Forsythes, McDuffies, Randolphs, and almost the whole talent of the South. It was bad enough to vote for such a man. But Clay might have recovered from that. But to vote for him and then take office under him was suicide. A mere politician would have played the game quite differently. The Crawford vote was the vote to conciliate; and Crawford, in all human probability, would not live to be a candidate at the next election. One vote for him would not have altered the result; while had Adams or Jackson been elected Clay would have retained his chances for the presidency and been uncommitted with the advantage of the strength he had conciliated. But instead of this he placed himself voluntarily in the minority to bear the brunt of the assault of a majority that knew no mercy and would give no quarter. When Adams was elected, opposition to him became the rallying cry of all the aspirants; and those who were rivals before now became confederates. Clay was in all respects too prominent a man, as one of the actors in installing the administration, and as a member of it, to escape assault; and it turned out that without the powers or honors of President he had to endure the assaults and annoyances of presidential opposition.

"Those assaults were not slow in coming. The public mind had lain fallow for some years, and was prepared for a bountiful crop of political agitation. Jackson raised the war cry, and the hills and valleys all over the land echoed back the shout. A lava tide of obloquy poured in a fiery flood over Clay. It seemed to take him by surprise. The idea that his voting for Adams, and then occupying the first office in his gift, seconded by the supports which the hypotheses of 'bargain' found, or were made for it, should originate such a charge, seems never to have entered his imagination; and when it came he had the weakness to attempt to strangle it by personal intimidation or to avenge it by violence.

"The election of Adams, under such circumstances, was the making of Jackson. It filled up his popularity. It completely nationalized it. The State Rights party, to whom the name and lineage of Adams were enough for opposition, turned at once to the man who could best defeat him, and saw at a glance who that man was, and the popular sympathy was quickly aroused in behalf of *the honest old soldier circumvented by two cunning politicians.*" *

In 1832 Clay sought to retrieve the disaster of 1828, but was defeated by Jackson. When the latter finally withdrew from public

* Party Leaders, page 300.

life, his lieutenants succeeded to the warfare on Mr. Clay, which was maintained until age, allied to repeated disaster, completed the conquest—indeed, until "Harry Percy's spur was cold."

Clay's defeat was the defeat of his friends. It closed to them the avenues of Federal preferment. With occasional exceptions, the Whig party maintained its ascendancy in Kentucky, but it cost an unceasing struggle. Even this hard-bought triumph had its drawbacks. The party was full of talent and ambition. The honors that the State could confer were all the rewards in reach. Mr. Clay expected to share in the highest of these. His loyal friends divided the rest. The property was small, the distributees numerous, and not unfrequently the Jackson men made spoil of it.

The points of difference between the characters of Mr. Clay and Mr. Hardin were more numerous than the points of sympathy. But the latter did exist. The characters of Hardin and Jackson were antipodal. Hardin—like Clay—underestimated Jackson's political strength. Instead of analyzing it and discovering why he was and should be strong, a different course of logic was adopted. It was unwarrantably assumed that the people distrusted, and should distrust, a military chieftain, and that the election of such a person threatened the stability of the Government. "The military principles have triumphed," said Mr. Clay in 1828, "and triumphed in the person of one devoid of all the graces, elegancies, and magnanimity of the accomplished men of the profession."* Jackson's rashness and cruelty were exaggerated. His illiteracy, of itself, was supposed to render his pretensions absurd. From such points of view (prior to 1828) Hardin and the Kentucky Whigs contemplated the hero of New Orleans.

But a political revolution was transpiring, and Jackson was on its topmost wave. In 1828 Jackson's vote in Kentucky was nearly eight thousand greater than that of Adams, notwithstanding that three months before the Adams candidates for governor and lieutenant-governor had been elected. Mr. Hardin's old adversaries, the New Court party, had supported Jackson almost solidly—another reason why he should not do so. When Jackson had attained the presidency, he rapidly furnished arguments to his opponents. He proscribed his enemies and rewarded his friends. He fell under the influence and control of artful politicians. Obnoxious appointments were made. His self-will and ungovernable passion betrayed him into many follies. His administration was not a little in contrast to all that had preceded. Party

* Letter of Mr. Clay to H. Niles.

spirit ran higher than ever before. The administration maintained a newspaper organ (a practice then introduced) whose diatribes were of unparalleled bitterness. The Whigs, or National Republicans, under the lead of Clay, and the Democratic, or Locofoco followers of Jackson, were so widely separated by political feelings as to interrupt in no small degree the social and business intercourse of communities. The intense passion of the leaders passed down the rank and file.

Mr. Hardin, although a faithful Whig, was, however, not transported by his zeal. He, perhaps, excited party spirit in others that he himself shared only to a limited extent. He never came to respect General Jackson. He ridiculed and denounced him quite sincerely.

"IT WON'T HOLD ANOTHER DRAP."

He was elector for Clay in the presidential campaign of 1832. As such, he canvassed the State, increasing his fame for oratory and contributing to the triumph of his party in the State.

"I heard Mr. Hardin on Jackson, in 1832," writes Colonel Allen, "and I then thought it the most exquisite irony I ever listened to. He drew a picture of Jackson's excessive vanity and how the magician of Kinderhook (Mr. Van Buren) ministered to it, for his own purposes, and how complacently the old hero received the ministrations. He depicted the President occupying an easy chair in one of the private rooms of the White

House, a weak, ill-educated, vain old man, in the hands of the wily fox—Van Buren—who, being present, played on his inordinate vanity to subserve his private ends.

"There was more truth than poetry in the picture," remarks Colonel Allen. "The particular flattery being administered at the time was the repetition of the number of high-sounding names his admiring followers had bestowed upon him. 'General Jackson,' says Van Buren, 'you are the old Roman.' 'Yes,' responds the general, 'I am the old Roman; if I ain't I would like to know who is.' 'General Jackson,' says Van Buren again, 'you are the second father of your country.' 'Oh, yes,' answers Jackson (who, by the way, was childless), 'I am the father of my country, if I am the father of nothing else.' 'General Jackson,' continues the little flatterer, 'you are the hero of New Orleans.' 'Yes—oh yes,' says the old man; 'I am undoubtedly the hero of New Orleans, if I am not, I would like to know who is!' 'General Jackson,' once more says Van Buren, 'you have filled the measure of your country's glory—your cup of greatness is full.' 'Certainly I have,' responds the President with unction, 'it won't hold another drap.'"*

The Whig party had within its fold the best talent of the State. The energy of that talent kept it in power there, notwithstanding the popular admiration for military glory and the insidious pressure of the executive patronage and influence. Save the opportunities afforded by a congressional career, Whig politicians were left for the most part to deal with local affairs. Possibly there was compensation in this. Thus the State enjoyed the benefit of talent that otherwise might have shone in the cabinet, graced the supreme bench, or adorned diplomatic missions abroad. The State was well governed. The standard of political honor was exalted. Questions of constitutional law and the science and policy of government were discussed on every hilltop and in every valley. The public mind was educated and public sentiment given tone and direction. In the ministrations of that political priesthood that kept Kentucky thus faithful to Clay and Whiggery, none were more laborious or more potential than Ben Hardin.

* Letter from Colonel Alfred Allen, of Hardinsburg.

CHAPTER XIV.

IN AND OUT OF THE STATE SENATE.

MR. HARDIN did not seek a return to the Legislature at the August election, 1826. The death-stroke had been dealt to the new court in 1825, and that tribunal had quietly folded its hands, awaiting its end. No prospective question before the General Assembly either invited or offered employment for his talents. What remained to be done for dismantling the new court could be as well accomplished by another. So he turned for the time from affairs of state to his private business and professional duties.

January 14, 1827, death, for the first time, invaded his family circle. His son William was a boarding student at St. Joseph's College, at Bardstown. That college was a Roman Catholic institution, possessing an accomplished faculty, and enjoyed, at that time and long afterward, a wide and deservedly high reputation for learning. It was then a fair rival for Centre College, of Danville, and Transylvania, of Lexington. William, becoming ill of an epidemic fever, soon died. He was in his eleventh year, and was assisted in preparation for death by the Catholic Church, and died in reception of its spiritual consolations. The entire college turned out to attend the obsequies. The noted Rev. Robert A. Able preached the funeral sermon. These facts are related to the author by one who was then present—a twelve-year-old boy, who has not forgotten his young friend so long since gone to the "other side." Such an event could not but throw a gloom over the household, which time and the consolations of religion only availed to disperse.

In the spring or summer of 1827, Mr. Hardin became a candidate for the State Senate, to which he was elected in the August following. The State Senate, in 1827, was a somewhat more august body, and enjoyed many functions not vouchsafed to its successor under the present Constitution. With the governor resided the power of filling all the more important judicial and ministerial offices in the State by appointment by and with the advice and consent of the Senate. When the governor and a majority of the Senate were in political accord, as a rule, the appointees of the executive were confirmed

with little hesitation. When this was not the posture of affairs, gubernatorial appointments were sometimes sharply criticised. But even when governor and Senate were in harmony, nominations were not at all times advised or consented to. Illustrations of this kind will presently be furnished. There is some reason to believe that a seat in the Senate was not an inauspicious point from which to catch the ear of the executive when the latter came to dispense favor. The percentage of senators and senators' particular friends nominated to office was strikingly greater than fell to any other body or class of people.

The Legislature met December 3d—Lieutenant-Governor Robert B. McAfee presiding in the Senate. John Speed Smith, of the Administration (or Old Court) party, was chosen speaker of the House of Representatives. The relief governor, Joseph Desha, had, at the time, one more year to serve. The political storm aroused by the old and new court controversy, it is true, was abating. But the alignment of parties existing when that struggle was at its height was continued upon other issues. National questions were never marked by greater heat and asperity, and partook almost entirely of a personal character. Incensed by his defeat in 1824, General Jackson did not hesitate to stigmatize the chief author of his disaster—Henry Clay—with the charge of "bargain and intrigue." The election for President, falling into the House of Representatives, between Clay, Crawford, Adams, and Jackson, and the contest coming between Jackson and Adams, Mr. Clay (who was a member of the House) voted and cast his influence for Adams, and the latter was successful.

When Adams was inaugurated, he appointed Clay secretary of State. These events were charged to be the result of an agreement. This charge was the chief battle-cry of the Jackson men as early as 1827. The presidential contest of 1828 was between Jackson and Adams nominally, but between Jackson and Clay really, and the issue—"bargain and intrigue." Mr. Clay quit his post at Washington to vindicate his character in public speeches. In regard to a speech he delivered at Lexington on this question, Mr. Webster thus wrote him: "In point of merit, as a clear and well-stated argument, it is certainly at the head of all your efforts, and its effects on public opinion have not been exceeded by those of any political paper, I may almost say, within my generation." The substantial portion of the New Court party became supporters of General Jackson—while the Old Court adherents, with still greater unanimity, followed

Mr. Clay. In this state of affairs, Mr. Hardin became the champion of Clay and the Adams administration. At the present session of the Legislature no question interesting to modern readers was agitated, always excepting that perennial matter of the removal of the State capital from Frankfort—where it was then located (as it still is)—to some other locality.

Another event of the session deserves passing mention. John Allen, in the Senate, offered a resolution to investigate the charge of "bargain and intrigue" against Mr. Clay. On what theory the Kentucky Senate claimed power to make this investigation was then, as it must remain, a difficult problem. Mr. Clay thus commented on this proceeding:

"Is it not strange that no member of the *court*, nor any bystander, should have given me any account of my trial before the Senate of Kentucky? With the exception of one short letter before it began, and another after its commencement, from a friend residing some distance from Frankfort, I have received no satisfaction about the extraordinary proceeding. Of the result I am yet unaware.

"I pray, if I am to be hung, I shall be duly notified of the time and place, that I may present myself in due form to my executioner. But to be serious, was it not a most remarkable proceeding? I never doubted the good intentions of my friends, but, in this instance, I am afraid their zeal and just confidence in my integrity have hurried them into some indiscretions. By admitting the investigation, have they not allowed what no man of candor or sense believes, that there may be ground for the charge? At this distance it is difficult to judge correctly, but it seems to me it would have been better to have repelled the resolution of John Allen with indignation. I make, however, no reproaches."*

Like inventions that plague the inventors, so far from the investigation injuring the "great Commoner," it resulted in his entire vindication, and the gratifying victory of his friends—among the latter, Mr. Hardin.

In 1828, the election of President and governor fell in the same year. The terms of each ended in concurrent years, in Kentucky, until the new Constitution of 1850. In 1828, Andrew Jackson and John Quincy Adams were opposing presidential candidates. Thomas Metcalf—"old stone hammer"—then a member of Congress, was the Adams candidate for governor; associated with him, for lieutenant-governor, was Joseph R. Underwood. The Jackson ticket consisted of William T. Barry for governor, and John Breathitt for lieutenant-governor. The latter post was offered by the nominating convention

*Life of J. J. Crittenden, Vol. I., page 66.

to Judge John P. Oldham, who declined in favor of Breathitt. The result, in August, was the election of Metcalf, by seven hundred votes majority, over Barry. For personal reasons unknown, Underwood not only fell behind his chief, but was defeated by over one thousand majority. Notwithstanding this apparently equal division of political sentiment, in the November following the hero of New Orleans obtained a majority in the State of eight thousand votes.

On the 1st of December, the Legislature met in annual session. One of the first topics of interest about the State capital was the proposed resignations of the "old court judges"—Owsley and Mills. They had been the special objects of attack by the New Court party. The charge was made that they held their offices in defiance of the popular will. This charge from the hustings was especially burdensome and annoying to the successors of the "Old Court" party. To neutralize it, came the resignations referred to. It was undoubtedly supposed that the resigning judges would be renominated and promptly confirmed. Thus would it be demonstrated that the old judges had not defied the will of the people by retaining their places. The following extract from a letter dated December 3, 1828, from Mr. Crittenden to Mr. Clay, illustrates the situation as it then existed: "Our judges of the Court of Appeals—Owsley and Mills—have this day delivered their resignations to the governor. This will deprive the agitators of one of their principal topics. I think they will both be renominated. Owsley will be confirmed—Mills will be strongly opposed. He is, unfortunately, very unpopular."* Both were promptly renominated by Governor Metcalf, and both as promptly rejected by the Senate. Thereupon the governor sent to the Senate the names of George Robertson, his secretary of State, and that of Joseph R. Underwood, the late unsuccessful candidate for lieutenant-governor. These were confirmed. It seems that the office was not of Robertson's seeking. He felt himself to be (as he said) "a self-sacrificed victim of party policy."

The term of Richard M. Johnson, United States Senator, was soon to expire, so December 23d the two houses convened in joint session to choose his successor. George M. Bibb, chief-justice of the Court of Appeals, was elected over Dr. Burr Harrison, of Bardstown, the vote being eighty to fifty-three. Bibb had been of the New Court party, and was an adherent of General Jackson. The desire to remove him from the Appellate bench that he might be replaced with one of different constitutional views may have affected his success.

* Life of J. J. Crittenden, Vol. I., page 71.

January 14, 1829, the governor nominated Judge George Robertson for chief-justice in place of Bibb, but the Senate rejected the nomination. Mr. Hardin was taxed with this result. Mr. Chambers, a Kentucky congressman, writing to Mr. Crittenden from Washington, said: "We have letters communicating the rejection of George Robertson's nomination to be chief-justice. Ben Hardin is just the man I took him for."

The subsequent kind relations between Mr. Hardin and Judge Robertson render uncertain the cause of this opposition. On the rejection of Robertson the names of Richard A. Buckner, John J. Marshall, and Joseph R. Underwood were sent in succession to the Senate and all rejected "on political grounds," says Collins. If this latter be the true theory Mr. Hardin could not have opposed them as he and they were in political accord. Failing thus to present an acceptable nomination the governor suffered the chief-justiceship to remain vacant for a year. When Judge Robertson was again nominated at the following session, he was confirmed without further hesitation or difficulty.

At the August election, 1830, the Whigs secured a small majority in the Legislature on joint ballot. This was important to that party as the period approached for electing a successor to Judge John Rowan, then United States Senator, a distasteful Democrat, extreme in his partisan views. He was especially disliked by Mr. Clay. The latter in a letter to Judge Brooke, commenting on the complexion of the Legislature, significantly observed that "Mr. Rowan will be permitted to retire."

In January, 1831, the Legislature for three days unsuccessfully attempted to elect a United States Senator. The highest votes cast for different candidates were as follows: John J. Crittenden, sixty-eight; Richard M. Johnson, sixty-four; Charles A. Wickliffe, forty-nine; John Breathitt, sixty-six. After fifteen ballots the election was postponed to the following session. It was supposed that the succeeding August election would at least remove some of the existing obstacles to a choice.

A noticeable act of the Legislature in the year 1830 was that chartering a company to build a railroad from Lexington to one or more points on the Ohio river with a capital stock of $1,000,000. This was the first railroad charter in Kentucky. Such enterprises were then unknown west of the Alleghenies. Collins relates that in March of this year a "model of a railway, locomotive, steam engine, and car,

constructed by Joseph Bruen, of Lexington, was exhibited in Frankfort, and the belief created that carriages and heavy loads could be drawn as easily and certainly by steam power as boats could be propelled by the same power."

Mr. Hardin was a candidate for re-election to the Senate in August, 1831. Stillwell Heady, of Spencer county, was his competitor. Heady had served in the lower House during the term Mr. Hardin was in the Senate, had acquired some parliamentary experience, was a shrewd man and an adroit campaigner. He was, to a considerable extent, addicted to conviviality, and when in a jolly mood sang a good song. One of his favorites (rather paradoxically) on such occasions was, "The Old Oaken Bucket." He entered industriously into the canvass, delivering public addresses throughout the district, of which Mr. Hardin was the text. That the latter was not idle, may be judged by the following incident: On one occasion Heady had an appointment for speaking at Boston, in Nelson county. He was promptly on hand, but his opponent was absent. He proceeded with his speech, in which he arraigned Mr. Hardin for failing to attend his appointments, and also for absence from his seat and failure to vote in the Senate on some measures when the yeas and nays were demanded. On these points he dilated at length, and, as he fancied, somewhat to his opponent's cost. The orator, in delivering his address, occupied a porch fronting on the roadside, and just as he was concluding, somewhat to his surprise Hardin rode up. The dress of the latter consisted of roundabout and trousers of white linen, or what had been white before being bespattered and soiled from rapid travel, muddy roads, and a perspiring horse. As he rode up he threw one leg over his saddle and slipped off his horse in front of Heady, with a humorous smile on his face. When the latter concluded, Hardin began his speech thus: "Gentlemen, the Good Book tells us that 'he that cometh at the eleventh hour shall receive the same wages as he who cometh at the third hour,'" on which rule of compensation he insisted. He then said he had not had the pleasure of listening to the speech of his competitor, but he would, notwithstanding, proceed to answer it.

It was true he had not voted on every measure before the Senate during his term, but for that he had an explanation and excuse. He had a large law practice when he was elected, as his fellow-citizens well knew. His duty to his clients was imperative. He had many cases in the Court of Appeals at Frankfort. When one of those cases was

*Collins' History of Kentucky, Vol. I., page 36.

reached, he was compelled to temporarily vacate his seat in the Senate and attend to it. But when not thus engaged by professional business he was always at his post. Not so, however, with Mr. Heady.

He was frequently absent from his seat in the House when the yeas and nays were called. He was not a lawyer, and could not plead duty to his clients for his absence. "Where, gentlemen," proceeded Mr. Hardin, "where would you find him on such occasions? By going to the door of some neighboring grog-shop and listening you could hear the voice of the gentleman warbling, more or less musically, the words:

> "The old oaken bucket, the iron-bound bucket,
> The moss-covered bucket which hangs in the well."

Mr. Heady was defeated, but had the honor of succeeding Mr. Hardin, on the resignation of the latter in 1833.

The result of the August election, 1831, it was believed, assured Mr. Crittenden's election to the United States Senate. But this reasonable expectation on the part of his friends was doomed to disappointment. The attitude of Mr. Clay before the country and his connection with important public questions was such as to produce a general desire that he should be in Congress. In October Mr. Webster thus wrote Mr. Clay on the subject: "You must be aware, dear sir, of the strong desire manifested in many parts of the country that you should come into the Senate. There is certainly a strong feeling of that sort all along the Atlantic coast." "Everything valuable in the government," he added, "is to be fought for, and we need your arm in the fight." Before this letter arrived from Boston, Clay had written to his friend Brooke: "I am strongly urged to go to the Senate, and I am now considering whether I can subdue my repugnance to the service."

Mr. Crittenden, with patriotic self-abnegation, concurred with the views of Mr. Webster, and so waived his aspirations. "Had he pressed his own claims," said Thomas F. Marshall, "had he been selfish, it is certain beyond question or controversy that Mr. Clay could not and would not have pushed his younger friend and second from the place for which he had contended.

"He recognized Mr. Clay," Marshall continues, "as the great head of the opposition. He deemed his presence in the Senate necessary to its organization and success. In his judgment Mr. Clay ought to have been the man. He silenced and satisfied his own devoted friends and gracefully and voluntarily yielded to the national leader a seat which

that leader would never have claimed, and for which he could not, without indecency, have contended with a friend."* November 7th the Legislature convened in extra session for the election of a United States Senator. On the third day of the session it accomplished its purpose by electing Henry Clay, who received seventy-three votes to sixty-four cast for Richard M. Johnson. In this vote Mr. Hardin was recorded for Mr. Clay.

In November, 1820, the Legislature passed an act "to establish a public library at the seat of Government." The secretary of State, under advice of the governor, was authorized to sell or exchange such decisions of the Court of Appeals, acts of assembly, or *other* books of this Commonwealth as might be deemed expedient, and out of the proceeds purchase such *other* books, charts, or maps as were thought proper. It seems doubtful as to the motive of this act, whether prompted by a desire to accumulate a library or merely to convert superfluous or useless books on hand into something more desirable. While now a respectable collection, the early growth of the State library was slow. To Mr. Hardin it owed its first substantial impetus. "During the session of the General Assembly of 1832–3," writes George A. Robertson, "I observed some persons handling the reports (of decisions) then in the State House in such manner as to suggest that they were insecure and liable to be taken away, as no one seemed to have any special care or custody of them. I mentioned these facts to Mr. Hardin, who was then a member of the State Senate. Shortly afterward he prepared and procured the passage of an act creating the office of State librarian, and then insisted on my running for it. I yielded to his solicitations and was chosen, and retained the office by annual elections for seventeen successive years."

The act in question was passed January 25, 1833. It minutely defined the duties, rights, and authority of the librarian, but its most important provision was the appropriation of $2,500 to be expended during the period of five years in the purchase of books for the library. These facts are related to show, as they do show, that in an unbookish period and locality Mr. Hardin was a practical friend of learning.

In 1832, Mr. Clay and General Jackson met in a death-grapple for supremacy in American politics—as presidential candidates. The struggle was a heated one throughout the country, but nowhere more animated than in Kentucky. How equally the contending parties were matched was shown by the result of the gubernatorial contest decided in August. Breathitt, the Jackson candidate for governor,

* Speeches and writings of T. F. Marshall, page 423.

defeated Buckner by twelve hundred majority, while Morehead, the Clay candidate for lieutenant-governor, received a majority of twenty-five hundred votes. Breathitt was the last Democratic governor for a period of twenty years—which fact caused an exultant Whig to speak of his success as the "last gleam of the setting sun."

Mr. Hardin, as observed elsewhere, was a candidate for elector on the Clay ticket and as such canvassed the State thoroughly and vigorously. Such persons as yet survive who heard his speeches in that campaign—mere boys then—speak of them as marvelous in power and charming beyond description. Notwithstanding the equivocal result in August, in November Clay carried the State by over seven thousand majority. The unswerving fidelity of his own State, however, did not avail to avert his defeat—complete and overwhelming. His despondency over the result could not have been greater if a foreign enemy had overturned the government and subjugated its people. In the estimation of his friends Mr. Clay was as superior to General Jackson as Hyperion to a satyr. That the satyr should have vanquished Hyperion was the climax of calamity. A leading newspaper of the day, so far from dealing in hyperbole, very correctly expressed the feeling of the Whig party in its allusion to the assembling of the presidential electors at Frankfort in January, 1833:

"It was solemn and impressive—to us it had a melancholy solemnity—it was the only voice west of the tall and pillared Alleghenies that said 'my country'—it was the only voice from the broad and fertile valley of the Mississippi that said 'where liberty dwells, there shall be my country.' When the votes had been recorded—each man rising and voting in a distinct and impressive voice—the carrier selected, and the certificate signed, the College was dissolved by the chairman, Benjamin Hardin, Esq., in a dignified and eloquent address, in which he expressed his gratification that Kentucky was still independent of power and patronage, and that her natal star beamed as brightly on her, at this momentous period, as when the single-minded, hardy pioneers first pitched their habitations in the western wilderness. He said if the fair fabric of the Union must fall, he was rejoiced that Kentucky was free from the foul stain of contributing to that fall, and that amid the universal ruin Kentucky would hover on its brink, like a star upon the horizon, the last to sink; and as she went down, the broad-pennon which her brave sons had so often and so gallantly defended would be seen waving aloft, bearing the inscription: 'The cause of our country — Liberty forever!'"

CHAPTER XV.

HOUSEHOLD GODS.

BARDSTOWN ranked very high, in a social way, from its earliest years. Its people were refined, intelligent, wealthy, and hospitable. Its excellent schools attracted many persons from abroad—students seeking the advantages afforded by its learned faculties, and parents who sought a temporary residence near their children. Southern planters found refuge there, in summer, from the tropical heat and the diseases that scourged the sugar and cotton States. Fifty years ago, it could well claim to be considered a social center. The belles of Nelson reigned not less imperiously in Frankfort and Washington than in Bardstown, and some of them, by their wit and beauty, graced courts abroad. The town had not only refined and wealthy society, and citizens noted for talent throughout the country, but it boasted of distinguished visitors.

THE RETURN OF THE PRINCE.

A Frenchman, a stranger, came to Bardstown, some sixty years ago, and remained for several months, lavishly expending money on his personal wants, but maintaining the profoundest mystery as to whence he came or who he was. He finally disappeared, leaving the mystery of his identity unsolved. A strong suspicion existed that he was a prince *in cog*. It is related of this mysterious foreigner that, one day, he procured a horse of his host and rode out of town. It was not long before the horse was seen returning at top speed. The prince (if such he was) had abdicated the reins, but sat firmly poised

in the saddle grasping the "horn." He was cool and serene, but hatless, and it did not escape observation that the top of his head grazed the lintel as his coursing steed, full tilt, entered the stable door.

The foregoing is related as it was told; but, prince or no prince, there were many royal fellows about Bardstown who drank wines and liquors as well as wagered money on games in princely fashion. When Mr. Clay came there in 1829, it is said that after making one of his grand speeches he, with a company of boon companions, wore out the night around the gaming-table—a circumstance in keeping with the pronounced tastes of the great statesman. About that period there existed a peculiar custom at Bardstown, long since passed away and now well-nigh forgotten. Once or twice a month, or possibly more frequently, the chief hotel gave an entertainment known as a "buck supper," so called because venison was a chief item of the spread. None but gentlemen were admitted on these occasions, who were charged a fixed price per head for their fare. The entertainment embraced eating, drinking, and gaming. Well nigh everybody attended, from the dignified and wealthy lawyer, with superfluous funds, to the hard-working mechanic who subsisted on his income from daily labor. With the rest of his fellow-townsmen Mr. Hardin attended "buck suppers."

On one of these occasions there was present a young man named Hart, recently arrived in the town, and somewhat a stranger. He is described as a taciturn, modest, gentlemanly person who dressed well and was slow in getting acquainted. He sat for some time alone, silently observing the company. Not far away sat Judge Rowan at a table with others engaged in a game of cards. Luck was against the judge, causing him to become nervous and irritated. Finally turning to the unconscious Hart, of whose name he was ignorant, in his most lordly and mellifluous tone, "Mr. Jenkins," said he, "it greatly embarrasses me to have any one behind me looking into my hand, and you will greatly oblige me by moving your chair." The surprised stranger, without a word, moved his seat, but for years afterward bore his "buck supper" name of "Jenkins."

The town was sought by princes, as has been seen, but was not neglected by prophets. Some years prior to the coming of the Frenchman before alluded to, Lorenzo Dow, the famous and eccentric preacher, in wandering over the world, fell into Kentucky. He complains in his "Diary" of having been obstructed in his mission by Methodist

preachers; "but," says he, "God opened my way by means of a Baptist at Bardstown."

Referring to a somewhat later period General William Preston speaks very entertainingly of his own advent to Bardstown and Mr. Hardin's connection therewith:

"I have a very vivid recollection of my first acquaintance with Mr. Hardin. He had been employed by my family in an important law case which created an intimacy resulting in sending me to St. Joseph's College at Bardstown, it being arranged that I should become a member of his family, and be subject to his control—the same as one of his sons. This was not an uncommon arrangement in those old-fashioned times in Kentucky. This occurred about the year 1832. At that time Mr. Hardin was in the prime of manhood and at the height of his reputation. From personal appearance he would have been taken to be from forty-five to fifty years of age. I was then about sixteen.

"I well remember the ride from Louisville to Bardstown, on horseback, during a heavy snow-storm, and my odd reflections on the journey in reference to my guardian. Mr. Hardin was mounted on a strong horse; and arrayed in an old drab overcoat, with capes, wearing leggins and great buckskin gloves, he seemed entirely indifferent to the piercing cold. I was rather fashionably and thinly clad, and suffered much but made no complaint, and finding the company of old Jo, a colored *companion du voyage*, more congenial, slumped through the snow while Mr. Hardin, fifty yards ahead, muttered and spoke to himself as he rode along and gesticulated wildly in the winter air. I was quite amused at the scene and circumstance. I maintained my place in the rear until we came to a farm-house where he roused up an old political friend, who had once been a justice of the peace. In a few moments we were enjoying a blazing fire, and shortly hot coffee and a generous Kentucky supper. During all this period I had remained silent, from a suspicion that my guardian had a bee in his bonnet or had acquired inspiration from the Kentucky remedy during his ride without offering me or Jo a drink. Very soon after he had removed his outer covering, and as his grey eyes sparkled merrily in the light of the blazing fire, his healthful cheeks showed a man habitually temperate.

"For an hour he regaled his host with rare country gossip; the news of the courts; talked about the lawyers, all in a genial way that would have delighted Robin Burns. After ordering me to bed and seeing that I was sufficiently covered, he and the host continued their conversation, while I soon became unconscious of my surroundings. That night will never be forgotten! The next day we arrived safely at Bardstown, where Mr. Hardin was received by his family and children in a hearty way in a handsome house, where all was cheerful and happy. The impression made by this domestic scene was much at war with my preconceived opinions of his

character, and his house proved a happy home for me for nearly two years. At that period Mr. Hardin had a striking presence. He stood about six feet high, shoulders rather drooping, with a powerfully knit frame. His carriage was rather ungraceful and slouchy. I was told that he was of remarkable activity, and could, in three straight jumps, leap thirty-three feet, backward and forward. His manners were not polished, but were those of a country gentleman, careless in dress, but not ill bred. The face was broadly and massively marked, with a noble forehead—gray, glittering eyes —long and flexible nose, a large mouth—capable of every expression—probably excelling in the expression of irony, contempt, or ridicule, before which none of the chief men of Kentucky could stand for a moment without uneasiness. But under these rustic manners, he had an extreme veneration for everything that was grand or heroic, and a hearty appreciation of all that was refined in sentiment and manners."

Mr. Hardin was most happy in his marital relations. His marriage had been one of affection, the result of an attachment formed in youth. When he married he set out from the comfortable home of his father-in-law, Colonel Barbour, in Washington county, journeying to his new location at Elizabethtown. The roads were rough and lonely in those days and travel wearisome. He observed during the journey that his young wife showed signs of fatigue, which caused him some solicitude. "Betsy," said he, "do you wish you were back at your father's again?" To his relief she preferred to be with him, and so it was evermore. All her days she was a devoted wife, the genial light of the household, making glad all hearts about her.

Their oldest child, Lucinda, was born at Bardstown in 1809; their youngest, Sally, in 1822. Two more girls, Emily and Kate, and three sons, James, Rowan, and William, were added to the household between these dates. Of William's death in 1827 mention has already been made.*

In 1830 Lucinda Hardin entered her twenty-second year. Her father had always been fond of her, and in many respects treated her as a companion. She was handsome and sprightly, and had a large share of all womanly graces. She often accompanied Mr. Hardin on the circuit, and had made her entree into society at the State capital during his service there. Several years before she had met a young lawyer and politician of Hardin county, a young man of excellent family, who already gave evidence of energy and talent. Simultaneous with their meeting he became her suitor, and none was ever more devoted. The patriarchal wooing of seven years elapsed, however, before she rewarded his affection with her hand. Thus, in 1830,

* Chapter XIV.

Lucinda Hardin, as the bride of John Larue Helm, journeyed the same road her mother had traveled more than twenty years before, and found a home in the town where her father had begun his career before she was born.

Mr Hardin afforded his children every facility for acquiring an education. All of them attended the excellent schools at Bardstown. James received the appointment of cadet at West Point and graduated with credit at that institution. Rowan, quicker, though less solid than his brother, was proficient in his studies, though of such a volatile nature as to require "looking after."

On one occasion in his youth, with a view of curbing his impulsiveness, Mr. Hardin put him to work on the farm. Whereupon Rowan fled and was a fugitive a short while. Not long after this Mr. Hardin, on his way to the Breckinridge court, stopped at Mrs. Helm's in Hardin county. Mrs. Helm, who had heard of it, inquired how Rowan came to run off. Mr. Hardin explained that he had put him out with the hands in the fields and that he had run off to avoid work. Mrs. Helm, in strong terms, expressed her sympathy with Rowan, and thought it shameful that a man of Mr. Hardin's wealth should make so bright a boy do common labor. "Madam," replied Mr. Hardin, "I believe in teaching a boy to work—teaching him how to earn his living by his labor—teaching him the value of money, so that if he loses his patrimony he will be able to maintain himself by his own exertions." But Rowan never acquired a taste for the details of agriculture, notwithstanding this fatherly wisdom on the subject.

It is a venerable grayhead that writes the author that, about 1830, Kate and Sally were bright, attractive little girls, much admired by their boy associates, including the writer.

James and Rowan, when at home, were the life of the household. Their powers of conversation and their sallies of wit, as manifested in the family circle, afforded their father not a little secret delight. James, in person, was not so tall as his father, but slender. Rowan was not stout, but more substantial than his brother, though less in height. Both were good story-tellers, but Rowan had the more exuberant humor. Their parents were not seldom the victims of their jests. Once Mr. Hardin was leaving home to attend court. His horse was saddled at the gate, and ready for him to mount. Rowan slipped out, and lengthened the stirrup-leathers several inches. Mr. Hardin proceeded to mount, but was unable, when in the saddle, to reach either stirrup. Suspecting some of the servants of having

ridden his saddle, he was proceeding to use emphatic language, when Rowan, who was standing by, silently and secretly enjoying it, suggested that he had recently seen James using the saddle. Mr. Hardin, not perceiving the absurdity of the insinuation, half soliloquized: "Well, I'll be d—d, if I ever realized the length of that boy's legs before."

On another occasion, Mrs. Hardin related, at the table, a somewhat amusing story as to what had befallen a certain Mr. Smith. Before the meal was over, Mrs. Hardin, forgetting that she had once told it, repeated the story again. During the next meal, James asked Rowan if he had heard that story about Mr. Smith? No; he had not, but was anxious to hear it. Thereupon, James repeated it with great minuteness of detail, whereat Rowan evinced an unusual degree of enjoyment. In a few minutes, Rowan, innocently, and, as though, to some extent, to repay the pleasure the story of James had afforded, inquired of the latter if he had heard that amusing circumstance about Mr. Smith. James never had, but was eager to do so. Rowan repeated the story just as James had done, convulsing the latter. At intervals of a few minutes, the adventures of Mr. Smith were repeated alternately with precisely the same demonstrations, until stopped by Mr. Hardin with the suggestion that the "two d—d fools seemed to be crazy."

Not far from 1830, and for many years afterward, Mr. Hardin enjoyed a high degree of worldly prosperity. He carried on farming operations extensively, having a large farm and numerous slaves. Abundant harvests blessed the labors of the husbandman. But it was from his extensive law practice that his chief gains arose. He found constant and pleasant enjoyment in adding to a very respectable fortune—respectable for that day and locality.

In 1832 cholera visited Kentucky, being attended with great mortality and causing universal alarm. Abating during the winter, it returned the following spring more malignant and fatal than before. Bardstown was decimated, notwithstanding it was abandoned on the first alarm by almost every one who had ability to escape. Mr. Hardin was one of the few among the wealthier class who remained, and with his family helped in nursing the sick and burying the dead. His household was rewarded for its fortitude and charity—the pestilence passing it by unscathed.

As his daughters approached their twentieth year, excellent young men sought, wooed, and won them. Emily married Dr. Robert A.

Palmer, of Washington county; Kate was married first to Mr. Howell, and on his death to Thomas W. Riley, a prominent lawyer of Bardstown, and Sallie was married to George Dixon, a Kentuckian residing in the West. James and Rowan attained manhood and married early and happily. Thus the family circle was, for awhile, much reduced.

Before its various members had thus gone their several ways it was a happy household. Guests testify, not only to the hospitality they received, but to the harmony and affection prevailing in the family circle. When all were gathered it was a continual "feast of reason and flow of soul." While Mr. Hardin encouraged his children to talk, and was a pleased and delighted listener himself, yet he continually gave himself to free and familiar discourse beneath the roof-tree of home. His own conversation was at the same time instructive and entertaining. "Often," said his daughter (Mrs. Riley) "when others had discussed a subject without making it entirely plain, a few words from him made it so clear that 'it was as if the newly-risen sun had suddenly burst with full effulgence on what was before uncertain and obscure.'"

CHAPTER XVI.

THE PIONEER BAR.

AFTER the admission of Kentucky into the Federal Union, A. D., 1792, the influx of population was wonderfully rapid. By far the larger portion came from the Old Dominion. As a rule these were a better class than those from elsewhere—brought more character, more intelligence, enterprise, and refinement, and more worldly gear. Many young lawyers already at the bar in Virginia were tempted to Kentucky to represent land owners living abroad. Others were drawn thither by accounts of rich fields of litigation, and not a few by the opportunities for a political career.

Many Virginia youths studied for the bar after coming to the State. It may be confidently assumed that in earlier times the vast preponderance of the legal profession was Virginian born and bred, or descended from that stock. A cursory glance at these pages and the various histories of Kentucky will corroborate the statement. Thus it came to pass that the tone and spirit of the Virginia bar, to a very marked degree, were early injected into that of the newly-admitted State.

The better characteristics of the early bar, it is feared, have not been altogether preserved to later times. There was a courtliness and a dignity, it is true, that could not survive in the bustle and hurry of a utilitarian era. But this loss is slight, compared to what is feared to be a deterioration in more substantial qualities. The ancient lawyer, behind all his dignity and vain-glory (if you please), had solid virtues. He was not only learned in the books, but deeply and soundly conversant with legal principles. Instead of hunting precedents that were meager, he reasoned out the points of contention by a resort to fundamental principles. He, of necessity, was more diligent and accurate, since mistakes could not be so readily cured by amendments under the system of pleading and practice then as now. Referring to an earlier period than the beginning of Mr. Hardin's career, Edmund Burke testified in the British Parliament, in an emphatic way, to the learning and ability of the American lawyers of

that time, their sterling patriotism, and their skill in drafting the great state papers which were then promulged, and which yet command the general admiration of refined and cultivated minds in all countries.

"It is a remarkable fact," says an American writer, "that the great men of every State in the Union were those who figured about the time of the organization and the settling down of their several judicial systems into definite shape and character. Not taking into account the revolutionary era, unquestionably the most brilliant intellectual period was that which succeeded the turmoil, embarrassment, and confusion of the Revolution, and of the times of the civil agitation and contention next following, and out of which arose our present Constitution. The first thing our fathers did was to get a country, then fix on it the character of government it was to have, then to make laws to carry it on and achieve its objects. The men, as a class, who did all this were lawyers. Their labors in founding and starting into motion our constitutions and laws were great and praiseworthy; but after setting the Government agoing there was much more to do, and this was to give the right direction and impress to its jurisprudence. The statutes of a free country are usually but a small part of the body of its laws; and the common law of England, itself but a judicial enlargement and adaptation of certain vague and rude principles of jurisprudence to new wants, new necessities, and exigencies, was a light rather than a guide to the judges of our new systems, called to administer justice under new and widely-different conditions and circumstances. The greatest talent was necessary for these new duties. It required the nicest discrimination and the soundest judgment to determine what parts of the British system were opposed to the genius of the new Constitution, and what parts were inapplicable by reason of new relations or differing circumstances. The great judicial era of the United States—equally great in bar and bench—was the first quarter of this century. And it is a singular coincidence that this was the case in nearly every State, if not in all. Unquestionably there is something in the atmosphere of a new people which refreshes, vivifies, and vitalizes thought, and gives freedom, range, and energy to action." *

This language is quoted because believed to be justly applicable to the bar of the State in Mr. Hardin's time. Chancellor Bibb, himself an illustrious lawyer of his day, was of like opinion: "I have heard Webster, Sergeant, and White, of Tennessee. Wirt, Webster, White, and Ogden are the ablest lawyers, and Walter Jones should also be ranked among the first. Emmett I have not heard, but his reputation is high. After all, I have not been convinced that the bar of Kentucky does not contain as much talent and force as any other bar in the Union." † Not only was it a body distinguished for dignity and

* Flush Times, by Baldwin, page 225. † Letter to J. J. Crittenden.

talent, but chivalrous courage was a marked characteristic. Personal cowardice was as odious among the bar of the State as among the hunters who had fought the British and the Indians. Hence, insulting language and the use of billingsgate were too hazardous to be indulged where a personal accounting was a strong probability. Not only did common prudence dictate courtesy among members of the bar, but an exalted spirit of honor and well-bred politeness largely prevailed. The word of counsel to his adversary was his inviolable bond. The suggestion of a lawyer as to the existence of a fact was accepted as verity by the court. To insinuate unprofessional conduct was to impute infamy.

It was the duelling age when false sentiments of honor were current, but despite this criminal folly, good came of it. Men were more respectful and self-respecting when a departure cost blood or life. De Tocqueville, referring to that era, called the bar the "aristocracy of America." The statement was nearer the truth when uttered than in later times.

It was an aristocracy not based exclusively on either birth, talents, fortune, power, or position, but to some extent on some or all of these. When manliness and personal honor were more valued, their possessor congratulated himself on an honest and unstained pedigree. He felt himself a leader in his community, entitled to its loyal respect, and at the same time answerable to public opinion, and subject to its penalties. With this constant obligation resting on him, it is not wonderful with what fortitude and self-denial, with what unflinching integrity the old time-worthy trod the narrow path of honor and duty, leading often through obscurity and poverty, when on his right hand and on his left were broad roads that would have led to an ephemeral fame, or a surreptitious fortune. Such a tone and spirit largely prevailed at the Bardstown bar when Mr. Hardin was admitted. Its members were the leaders of the profession for many counties around. With many moral and ethical attributes they had, in addition, a wide renown for learning, skill, and eloquence. No bar in the State was equal to it —none surpassed it west of the Alleghenies. To associate and compete with such men was (as the phrase goes) a liberal education. These legal Goliaths were the awe and terror of neighboring bars. It was in part to shake off this trepidation that Hardin changed from his first location. Moral giants, like their physical prototypes, are not so dreadful if one draws near and contemplates them closely. The mental, like the physical, retina has its illusions.

It is not intended here to give a consecutive or elaborate history of the Bardstown bar, but only a brief notice of some of its leaders in Mr. Hardin's time, who were his colleagues and rivals. In selecting the subjects for these sketches it seems according the natural order to begin with Felix Grundy, the oldest of those to be noticed. Both he and John Rowan (next to be mentioned) afterward removed from Bardstown, but not until they had laid the lasting foundations of professional success and fame. William P. Duval, a man of rare gifts, drifted into political life, and is remembered rather as the Governor of Florida and for rare colloquial powers, than for professional labors and ability. Ben Chapeze was a strong and able man who was too much in the front rank to be omitted. Charles A. Wickliffe's career was long, active, and successful. No one ever practiced at the Bardstown bar for so long a period—almost three-score years. Included is a sketch of the erratic John Hayes, who accomplished little of what he might have done, but left behind a posthumous fame for eloquence that finds no parallel in State history or tradition, save as that of the short-lived and lamented Menefee may rival it.

CHAPTER XVII.

THE BARDSTOWN PLEIADES.

CHARACTER is largely formed and molded by the books that are studied and the sentiments imbibed therefrom. Books open the door of thought, and lead the mind out by still waters, and cause it to lie down in green pastures. One's associates are open books, from which are gathered the best wisdom and most useful knowledge for all the practical affairs of life. If a just estimate can be formed of one's character by a glance at the books he has faithfully studied, still more accurately can he be measured by an understanding of those intellectual forces about him, after which his mind, in many respects, has been insensibly fashioned, and in contact with which his own powers have been developed and strengthened.

Not only did Grundy, Rowan, Duval, Hayes, Chapeze, Wickliffe, and Hardin constitute an intellectual galaxy of rare splendor—for they were all stars—but each unconsciously shed light on the other. There is a pollen of genius that floats abroad and fructifies its kind. Like begets like.

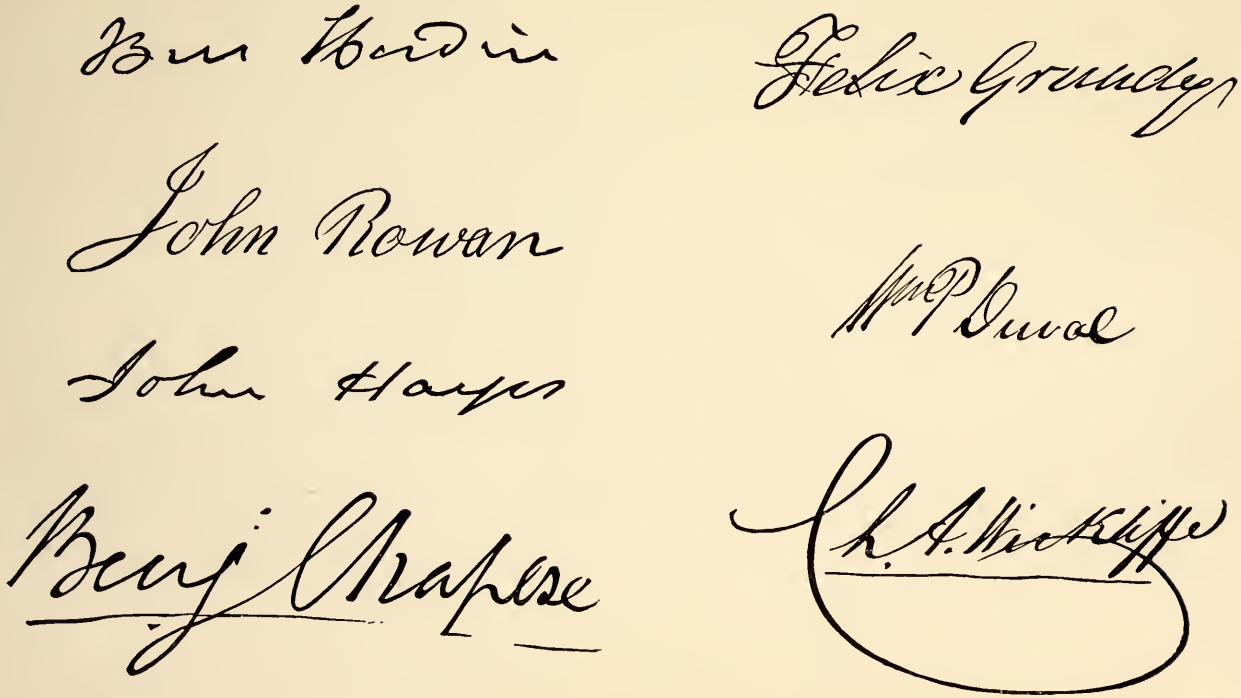
I.—Felix Grundy.

In a preceding chapter, the career of Judge Grundy was briefly traced to the period at which Mr. Hardin entered his office as a student. It now remains to take it up at that point and follow it to its close.

December 10, 1806, he was appointed, by Governor Greenup, judge of the Court of Appeals of Kentucky, and, in the spring following, made chief-justice of that court. His service on the bench continued but a short period. He delivered his last opinion December 17, 1807.

About that period, the son of a prominent citizen and an old personal friend was arrested, at Nashville, on a criminal charge. Judge Grundy was engaged to defend the youth, which he did successfully. His talents made a most favorable impression on the Tennesseans, and, in turn, he was so won by their kindness and attention, and the

FAC-SIMILE OF AUTOGRAPHS OF THE BARDSTOWN PLEIADES.



prospect of professional advantages, that he resigned his judgeship and removed to Nashville. He engaged in the practice of law, and immediately took the highest rank at the bar.

He was twice elected Representative in Congress, serving from 1811 to 1815. For several years he was a member of the Tennessee Legislature. In 1827 he was again a candidate for Congress, John Bell being his opponent. The contest created an immense excitement, resulting, however, in Bell's election by less than three hundred votes. General Jackson voted with an open ticket for Grundy.

He was elected United States Senator in 1829, to succeed John H. Eaton. In 1833 he was re-elected for a full term, and served until 1839. In the latter year he resigned to enter the cabinet of President Van Buren as attorney-general. That position he resigned in 1840, and was again elected United States Senator. He, however, never took his seat, dying at Nashville, December 12, 1840.

Judge Grundy was a great and good man. He was pronounced intellectually to be the foremost in the country, and was at all times and under all circumstances an honest and fearless advocate of the right. In Archbishop Spaulding's "Sketches of Kentucky," the following incident is related of Grundy's service in the constitutional convention of 1799, which is decidedly illustrative:

"Robert Abell was the only Catholic in that body. It had been agreed that each member of the convention should be at liberty to present such clauses as he thought worthy of insertion in the organic law they had met to perfect, and that, after debate on the clauses proffered, those should be accepted which would be found carried by a vote of a majority of the delegates. Robert Abell's room-mates were Felix Grundy and a lesser legal light who had abandoned the Presbyterian pulpit for the forum of the courts of civil law. The last-named party one day called the attention of his companions to a provision it was his desire to have embodied in the Constitution. The provision ran about as follows: 'It is further provided that no Papist or Roman Catholic shall hold office of profit or trust in the Commonwealth.' Seizing his pen Felix Grundy immediately indited the following: 'It is also provided that no broken-down Presbyterian preacher shall be eligible to any office in this Commonwealth.' Having read the clause, he assured the *quondam* minister that he would lay it before the convention and advocate its adoption the moment the provision he had shown them should be presented to that body."*

It is needless to say that the matter ended at that point.

The reader will find the decisions of Judge Grundy while on the Appellate bench in Kentucky published in the single volume of

* Catholicity in Kentucky, by Hon. B. J. Webb, page 104.

Hardin's reports. His congressional speeches, so far as reported, are preserved in the "Annals of Congress" and Gales and Seaton's "Congressional Debates." Mr. Parton classes him among the most intimate friends and decided partisans of General Jackson.*

The following is from the pen of a distinguished gentleman, who knew Judge Grundy personally and intimately and was his friend, one who yet survives to link that distant generation with the present:

"I knew Mr. Grundy well. After the adjournment of Congress in 1840 he and I left Washington in a stage coach and passed through Abingdon, Va. We had a list of appointments to make Democratic speeches from the first county in east Tennessee down to Nashville. He called me his *exhorter*. I greatly loved him. He was one of the most eloquent speakers I ever heard. If I were called upon to specify the two most eloquent speeches I have heard in my day, I should say one was made by Felix Grundy in the Democratic Baltimore convention in 1840, and the other made by Henry Clay in the Senate of the United States, the same year, on President Tyler's veto of the bill to establish a United States bank."†

Prentice, in his life of Clay, speaks of Grundy as an influential politician as early as 1803. In describing a debate between Grundy and Clay, occurring in 1804, on the question of repealing the "Lexington Insurance Office," Prentice thus writes:

"The only heroes in opposition were Clay and Grundy, both good speakers and youthful politicians; and the display of talent was so brilliant during the two days of the discussion that the hall was thronged with spectators, many of whom could obtain no seats, and the members of the Senate were in almost constant attendance at the House. It was the one great debate of the session. All acknowledged that Grundy had talents, and that he managed the debate with extreme adroitness; but no one pretended that he was equal to his opponent either in elocution, political information, logical skill, or extent of mental resources. After finding himself compelled to desist from offensive warfare, he tried every expedient to secure a safe escape; but his eagle foe pursued him closely in all his movements—his sweeps toward earth and his flights toward Heaven—and at last grappled with him and held him fast." ‡

Notwithstanding his discomfiture (and the account of the partial Prentice must be taken *cum grano salis*), Judge Grundy had the solacing triumph of carrying his measure through the House.

His removal to another State lessened, but did not obliterate, the rivalry between these gifted sons of Kentucky. They were

*Life of Jackson, by James Parton, Vol. III., page 274.
†Hon. Harvey M. Watterson.
‡Life of Clay, by George D. Prentice, page 27.

politically in harmony during the Madison administration, which they both supported. Federal writers of that period assumed that a very powerful triumvirate had large influence on the policy and destinies of the country, "James Madison, Felix Grundy, and the devil."*

But when the irreconcilable issues sprang up that divided Clay and Jackson, Grundy adhered to the latter. In 1830, alluding to the subserviency of the Senate to Jackson's will, Clay evinced his feeling against Grundy in a letter to J. S. Johnston: "Does it (the Senate) imagine that the miserable sophistry of that pliant tool, Felix Grundy, will justify it?" Clay was then still smarting under the charge of "bargain and intrigue," for which he held the friends of Jackson responsible.

In 1840, Mr. Clay was in better humor. It was the period of the Harrison campaign, when he visited Nashville in the interest of the Whig cause, and with the view of arraigning the Democracy for the mal-administration of Jackson and Van Buren. Notwithstanding Grundy had been, and still was, identified with the opposing party, Clay was desirous of meeting him, and eagerly inquired for him on reaching Nashville. Being told that he was absent attending a Democratic meeting, "Oh," said Mr. Clay, "I am not at all surprised to hear that mine ancient friend is still engaged in his accustomed occupation of defending criminals."

The late Senator Foote, in "Bench and Bar of the South-west," thus estimates Mr. Grundy: "As a jurist, he has not been regarded as having been very deeply and extensively informed, nor did he ever manifest an ambition for the highest celebrity in this respect. In scholastic attainments no one has thought of claiming for him a very high rank. His general reading was very extensive, and his knowledge of the affairs of the world and of the human heart was such as has seldom been surpassed. His person was impressive and commanding, his face radiant with mingled beams of genius and benevolence, his voice was naturally of great strength and sweetness, and it had been so modulated by judicious discipline as to adapt its tones most happily to the expression of all the emotions of which the human soul is susceptible. His gesticulation was never profuse, but always apposite and graceful. When addressing either court or jury his manner was composed and full of dignity, unmixed with either arrogance or affectation. His countenance was habitually serene and benignant."† He spoke apparently without preparation, yet Foote intimates that this was more apparent than real, and that he was

* Olive Branch, by Cary.

† Bench and Bar, page 156.

simply adept in the *ars celare artem*. He admits that Judge Grundy could be humorous when he chose, and sometimes indulged an inoffensive mimicry.

His relations with Mr. Hardin were always kind. "I remember," said Mrs. Governor Helm, "seeing Felix Grundy when I was a school girl. It was at Dr. Burr Harrison's residence, in Bardstown. When I first saw him I took him for a red-faced Irishman. He was a man of medium size, is my recollection. When he saw me, and was told I was Ben Hardin's daughter, he ran and caught and kissed me."

II.—John Rowan.

In a previous chapter, some of the incidents in the life of Judge Rowan, occurring prior to the year 1824, have been mentioned. Others are to be referred to now.

Federal Hill, the Home of Judge Rowan, at Bardstown.

When a young man, he had taught school—or, as he sonorously expressed it, on one occasion, "engaged in the humble employment of a pedagogue." In his early career at the bar he made his mark as a criminal lawyer. In the early years of his practice he received the appointment of prosecuting attorney. After convicting a young man of felony, Rowan experienced such compunctions that he resigned his office, resolving never more to prosecute. Thereafter he only appeared for the defense. His defense of one Skaggs, tried for murder

at Bardstown in 1798, was pronounced masterly, and "obtained for him a reputation which followed him through life as one of the ablest lawyers at the bar of Kentucky, especially in criminal cases."*

In 1803, he became involved in a personal difficulty, over a game of cards, with Dr. Chambers, of Bardstown. In the course of the play a dispute arose between them. Dr. Chambers was exceedingly overbearing and offensive. The following account of the duel that followed is from an interesting sketch of "Jo Daviess, of Kentucky:" †

"A dispute had arisen between the parties. Rowan, unaccustomed to endure such treatment, answered hotly, at which the doctor sprang up from the table with an oath, exclaiming that 'it was not for him to remain in such company, to be contradicted by the son of an obscure plebeian.' Stung by such insolence, Rowan replied that 'it was better to be the son of an obscure plebeian than the husband of a woman who had——', alluding to some whispers then current in relation to the conduct of Mrs. Chambers. Such an expression of course admitted of but one reply, and a challenge was given on the spot. But the young man, ashamed of having in his anger reflected so coarsely on a woman, refused to accept it, making at the same time the most ample apologies. The doctor, however, would take no explanation, and insisted on a meeting; and as Rowan's reluctance to fight in such a quarrel became more manifest, his opponent's insults grew more outrageous, until the high-spirited youth could submit to them no longer. He accepted the challenge, remarking as he did so, 'Since Dr. Chambers compels me to fight after making every apology, I shall be sure to kill him,' adding, 'and I will hit him in the button nearest his heart.' The parties accordingly met, Jo Daviess and Colonel Allen (who was killed afterward at the battle of the Raisin) being Rowan's seconds. At the first fire Dr. Chambers fell, the bullet entering his body within an inch of the button which his antagonist had previously designated as his mark. The wound was at once known to be mortal, and all engaged in the affair felt that they must fly immediately, for they well knew the family of the unfortunate man would urge the prosecution against them with a rigor seldom shown at that time, when dueling, though forbidden by the law, was by public opinion scarcely regarded as criminal. Daviess made his way on foot to my father's house, thirty or forty miles distant, and remained for several days in a sort of semi-concealment."

The event produced a profound sensation—feeling being strongly against Rowan. An excited mob visited his house with the purpose of vengeance. Discovering its approach, he dressed one of his negroes in his hat and cloak, and started him on his riding horse across the fields, while he hid himself in some cliffs. This he easily

* Allen's History of Kentucky—sketch of John Rowan.

† Harper's Magazine, Vol. XXI., page 349.

did, as the mob, misled, pursued the negro, who escaped. In a few days Rowan was arrested. Felix Grundy was at the time Commonwealth's attorney, but resigned to avoid prosecuting. The prosecution, by some means, failed—the usual result in that day of dueling homicides—Allen and Daviess acting as his counsel. *

In the full tide of his popularity as the leader of the Relief party, Judge Rowan was elected as successor of Isham Talbott, United States Senator. On passing from the turmoil of a "Relief" Legislature to the dignified quiet of the National Senate, he relinquished none of his ultra views in favor of popular rights. He had argued as a lawyer and held as a judge—as observed in a previous page—the constitutionality of the occupying claimant law. The contrary decision of the Supreme Court in no wise shook his convictions. When it was proposed in the Senate to reorganize the judges of that court, he offered an amendment that a concurrence of seven of the ten judges should be necessary to declare any legislative act unconstitutional. He advocated in a powerful speech the abolition of imprisonment for debt under process from the courts of the United States, and in 1828 such a law was enacted, partly the result of his strenuous efforts.

Judge Rowan was the colleague of Colonel Richard M. Johnson, and neither of these gentlemen was in favor with Mr. Clay, at that time secretary of State under President Adams. "I am sorry," wrote Clay to Crittenden, in March, 1826, "to tell you that our senator (Mr. Rowan) is among the bitterest opponents of the administration. He appears as if he had been gathering a head of malignity for some years back, which he is now letting off on poor Mr. Adams and his administration. He is, however, almost impotent." Judge Rowan was in sympathy with the movement then already begun in the interest of General Jackson's candidacy for the presidency. It was not part of the policy of that movement to contribute anything to the success or serenity of the Adams administration. Two months later, Clay again wrote Crittenden: "Our Senator, Mr. Rowan, made a violent opposition to Trimble's nomination (as justice of the Supreme Court), and prevailed upon four other senators to record their negatives with him. He is perfectly impotent in the Senate, and has fallen even below the standard of his talents, of which he has some for mischief, if not for good."

*The firearms used by Judge Rowan in this encounter were thus disposed of in his will: "My dueling pistols I bequeath to my son John during his life, and at his death to his eldest son. They are never to be used by either but when their honor imperatively demands it, and in that case I know they will be held steadily."

Perhaps the relation between these two great men was such that neither did nor could do justice to the character of the other. Judge Rowan's opinion of Mr. Clay was hardly more flattering. Rowan was of the Jeffersonian school of democracy. "That he should have been strongly inimical to the Whig policy, of which Mr. Clay was the chief exponent and champion in Kentucky," says Mr. Webb, "was but natural." But he gave Mr. Clay little credit for exalted mental gifts, still less for statesmanship. He was often heard to express the opinion that Daniel Webster was much the superior man. He could not understand why it was that the Massachusetts statesman was so much in the habit, as he expressed it, of "playing second fiddle" to one so greatly his inferior. Speaking on a certain occasion of the distinguishing characteristics of these eminent men, he illustrated his idea by the following supposed case: "If the two should go duck shooting together, Mr. Clay would expect Mr. Webster to assume the office of spaniel, to bring out the birds, and the latter would not perceive that there was any degradation in his assumption of such an office."*

The last public service performed by Judge Rowan was in the capacity of commissioner to adjust claims of citizens of the United States against Mexico, under the convention of Washington, of the 11th of April, 1839. In this office he labored with great assiduity. On the temporary adjournment of the commission, he visited his family in Kentucky, but, being prevented by indisposition from returning to Washington on its reassembling, he resigned his post. On the organization of the Kentucky Historical Society, in 1838, he was elected its president, and held the position until his death. He died, after a short illness, at his residence in Louisville, the 13th of July, 1843, in the seventieth year of his age.

In person, Judge Rowan was a large, broad-shouldered man, six feet one and a half inches in height, erect, tending to obesity in later life, but, younger, was of great physical strength and endurance, which, however, was impaired by lameness resulting from a stage-coach accident. Over his intelligent gray eyes jutted a massive forehead, crowned with thick hair, and terminating at the base in shaggy brows. His strongly-marked face betokened the character of the man and plainly hinted at his Scottish origin. His presence was extremely stately and imposing. He has been described, when in the excitement of debate, as leonine in appearance.

He was a man of rare scholarship, who delighted in the classics. He read the Latin with the same facility as English. He prepared a

* Life of Lazarus W. Powell, by B. J. Webb.

manuscript Latin grammar for his own diversion. His stores of knowledge seemed boundless. He was an attractive conversationalist, and delighted to gather about him a company of young men and entertain them on any subject that presented. All were silent when he spoke. He was exceedingly chaste in language and sentiment, and eloquent in expression, never, however, indulging an approach to wit or humor.

Said one, who knew him personally: "None who ever heard him in conversation could forget the purity of his style, the bland elegance of his manner, the terse chasteness of his figures, and the majestic affability of his demeanor to those around him. He was a combination, in this particular, of the strength and depth of McIntosh with the graceful and diffusive richness of Goldsmith."* His standard of lawyership was exalted. "No man can become a good lawyer," said he, "who is not a good scholar. Professional excellence can not be attained by one not versed in general literature and the sciences."

The surviving products of this accomplished man are chiefly to be found in reports of congressional debates during his service in the House and Senate. His last forensic speech was for the defense, in the celebrated Wilkinson trial. On that occasion he exhausted the reasoning against the acceptance by lawyers of retainers for the prosecution of capital cases. This was done for the especial reproof of Mr. Hardin, employed by the prosecution. The curious reader will find the speech in a recent publication—"Carlton on Homicide"—a speech teeming with sophistries that have produced conscientious compunctions on the subject in many confiding and uncritical lawyers. A still more remarkable example of his logical power is to be found in the preamble to a legislative resolution, in 1825, condemning the Court of Appeals on account of its decision in Lapsley vs. Brashear.† In an entirely different vein is the following extract from a speech in the Legislature, in 1824, in the tumultuous debate on the relief question, in which he was a leader. Referring to Mr. Hardin, he is reported to have said: "The gentleman has seen fit to cast reflections upon me in his speech. My domestic afflictions, and many other causes, have to some extent tempered the chivalry of my nature, but I have seen the day when one glance of my eye would have pulverized him to dust. I have

> "'Tray, Blanche, and Sweetheart,
> And the whole pack, at my heels'—

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* A definition of drunkenness, once given by him, might well have emanated from Dr. Johnson: "An ebullitionary effusion of inebriety."

† This preamble will be found in Appendix, note B.

But I care not for their aspersions. I cast them off as the lion shakes the dew-drops of the morning from his mane."

Mr. Hardin knew him as only so profound a judge of human nature could know another. Much may be inferred as to the nature of his opinion of Rowan when he called him the "Old Monarch." He said, however, that he had no intellectual growth after passing into the forties. If correct in this opinion, does it detract from Rowan's fame? Dr. Johnson thought the mind obtained a stationary point from whence it can never advance, occurring before the middle of life. "When the powers of nature have obtained their intended energy, they can be no more advanced. The shrub can never become a tree. Nothing then remains but practice and experience."

He was an inveterate gamester, and once confessed that in the excitement of that pursuit he found relief from painful reminiscences. He was by nature an aristocrat, courteous and genial to his equals, but forbidding in manner to social inferiors. Naturally enough, he was unpopular with the masses, who harshly criticised him. Beneath an exterior cold and dignified almost to repulsion, his heart beat warmly and faithfully for his friends, and to his family his devotion was unmeasured. No higher testimony to his filial affection could be furnished than the provision of his will forbidding a monument to himself because his father's grave was unmarked.

He long resided at his country seat, "Federal Hill," near Bardstown, where he dispensed a liberal hospitality. About 1823, he removed to Louisville, which continued his residence until the close of life.

III.—Governor William P. Duval.

In "The Early Experiences of Ralph Ringwood," in "The Crayon Papers," by Washington Irving, is to be found a sketch of the early life of Governor Duval.

While "The Crayon Papers" are to be found in any well-selected library, yet to many readers they may not be readily accessible, and so extracts from them are here given. Mr. Irving appends an introductory note as follows: "Ralph Ringwood, though a fictitious name, is a real personage; the worthy original is now living and flourishing in honorable station. I have given some anecdotes of his early and eccentric career in, as nearly as I can recollect, the very words in which he related them. They certainly afforded strong temptations to the embellishments of fiction; but I thought them so

strikingly characteristic of the individual, and of the scenes and society into which his peculiar humors carried him, that I preferred giving them in their original simplicity."

The statements in this note are not the pretenses of an anonymous writer (for Irving at that time wrote under a *nom de plume*) as may be inferred from a statement by a writer some years ago in the *Atlantic Monthly*. In "Notes of New England, by a Virginian," the writer mentions seeing at a hotel in New York, on one occasion, Governor Duval and Mr. Irving in close and protracted conference. That the notes for Ralph Ringwood were then procured is a reasonable inference, and if truth has been adorned, the responsibility rests with "Ralph" rather than his biographer.

"I am a Kentuckian by residence and by choice, but a Virginian by birth," begins Ralph; "the cause of my leaving the 'Ancient Dominion' and emigrating to Kentucky was a jackass! You stare, but have a little patience, and I'll show you how it came to pass."*

Ralph's father was a widower, and a certain shrewish Barbara, his housekeeper. In order to a Sunday ride, the young man had secured a jack, accustomed to run on the commons, and had ensconsed him in a smoke-house on the Saturday night. Barbara, finding the animal there and mistaking it for the devil himself, fell into fits, which resulted in a flogging to Ralph at the hands of an uncle. The sequel of all was "a certain wild roving spirit of freedom," said Ralph, "which, I believe, is as inherent in me as it is in the partridge, was brought into sudden activity by the checks and restraints I suffered."

"'I'll go from home,' thought I, 'and shift for myself.' Perhaps this notion was quickened by the rage for emigrating to Kentucky, which was at that time prevalent in Virginia. I had heard such stories of the romantic beauties of the country; of the abundance of game of all kinds, and of the glorious and independent life of the hunters who ranged its noble forests and lived by the rifle, that I was as much agog to get there as boys who live in seaports are to launch themselves among the wonders and adventures of the ocean."

Barbara at length relented, and his father expostulated, but all in vain. To Kentucky he would go; as for occupation he would "hunt!"

"Accordingly, as soon as spring had fairly opened," proceeds the narrative, "I sought my father one day in his study, and informed him I was about to set out for Kentucky, and had come to take my leave. He made no objection, for he had exhausted persuasion and remonstrance, and, doubtless, thought it best to give way to my humor, trusting that a little

*Crayon Papers, by W. Irving, page 116.

rough experience would soon bring me home again. I asked for money for my journey. He went to a chest, took out a long green silk purse, well filled, and laid it on the table. I now asked for a horse and servant.

"'A horse!' said my father, sneeringly, 'why you would not go a mile without racing him and breaking your neck; and as to a servant, you can not take care of yourself, much less of him.'

"'How am I to travel, then?'

"'Why, I suppose you are man enough to travel on foot.'

"He spoke jestingly, little thinking I would take him at his word; but I was thoroughly peaked in respect to my enterprise; so I pocketed the purse, went to my room, tied up three or four shirts in a pocket-handkerchief, put a dirk in my bosom, girt a couple of pistols around my waist, and felt like a knight-errant, armed cap-a-pie and ready to rove the world in quest of adventures.

"My sister (I had but one) hung around me and wept, and entreated me to stay. I felt my heart swell in my throat, but I gulped it back to its place and straightened myself up. I would not suffer myself to cry. I at length disengaged myself from her, and got to the door.

"'When will you come back?' cried she.

"'Never, by heavens!' cried I, 'until I come back a member of Congress from Kentucky. I am determined to show that I am not the tail end of the family.' Such was my outset from home. You may suppose what a greenhorn I was, and how little I knew of the world I was launching into.

"I do not recollect any incident of importance until I reached the borders of Pennsylvania. I had stopped at an inn to get some refreshment, and, as I was eating in the back room, I overheard two men in the bar room conjecture who and what I could be. One determined at length that I was a runaway apprentice, and ought to be stopped, to which the other assented. When I had finished my meal and paid for it, I went out at the back door, lest I should be stopped by my supervisors. Scorning, however, to steal off like a culprit, I walked around to the front of the house. One of the men advanced to the front door. He wore his hat on one side, and had a consequential air that nettled me

"'Where are you going, youngster?' demanded he.

"'That's none of your business!' replied I, rather pertly.

"'Yes, but it is, though! You have run away from home, and must give an account of yourself.'

"He advanced to seize me, when I drew forth a pistol: 'If you advance another step I'll shoot you!'

"He sprang back as if he had trodden on a rattlesnake, and his hat fell off in the movement.

"'Let him alone!' cried his companion, 'he's a foolish, mad-headed boy and don't know what he's about. He'll shoot you, you may rely on it.'

"He did not need any caution in the matter; he was afraid even to pick up his hat; so I pushed forward on my way without molestation. This incident, however, had its effect upon me. I became fearful of sleeping in any house at night, lest I should be stopped. I took my meals in the houses, in the course of the day, but would turn aside at night into some wood or ravine, make a fire, and sleep before it. This I considered was true hunter's style, and wished to inure myself to it.

"At length I arrived at Brownsville, leg-weary and way-worn, and in a shabby plight, as you may suppose, having been 'camping out' for some nights past. I applied at some of the inferior inns, but could gain no admission. I was regarded for a moment with a dubious eye, and then informed that they did not receive foot-passengers. At last I went boldly to the principal inn. The landlord appeared as unwilling as the rest to receive a vagrant boy beneath his roof; but his wife interfered in the midst of his excuses, and half elbowing him aside: 'Where are you going, my lad?'

"'To Kentucky.'

"'What are you going there for?'

"'To hunt.'

"She looked earnestly at me for a moment or two.

"'Have you a mother living?' said she, at length.

"'No, madam; she has been dead for some time.'

"'I thought so,' cried she, warmly. 'I knew if you had a mother living you would not be here.'

"From that moment the good woman treated me with a mother's kindness. I remained several days beneath her roof, recovering from the fatigue of my journey. While here I purchased a rifle and practiced daily at a mark to prepare myself for a hunter's life. When sufficiently recruited in strength I took leave of my kind host and hostess and resumed my journey.

"At Wheeling I embarked in a flat-bottomed family boat, technically called a broad-horn, a prime river conveyance in those days. In this ark for two weeks I floated down the Ohio. The river was as yet in all its wild beauty. Its loftiest trees had not been thinned out. The forest overhung the water's edge, and was occasionally skirted by immense canebrakes. Wild animals of all kinds abounded. We heard them rushing through the thickets and splashing in the water. Deer and bears would frequently swim across the river. Others would come down to the bank and gaze at the boat as it passed. I was incessantly on the alert with my rifle, but somehow or other the game was never within shot. Sometimes I got a chance to land and try my skill on shore. I shot squirrels and small birds, and even wild turkeys; but though I caught glimpses of deer bounding away through the woods, I never could get a fair shot at them.

"In this way we glided in our broad-horn past Cincinnati, the 'Queen of the West,' as she is now called, then a mere group of log cabins, and the

site of the bustling city of Louisville, then designated by a solitary house. As I said before, the Ohio was as yet a wild river. All was forest, forest, forest. Near the confluence of the Green river with the Ohio I landed, bade adieu to the broad-horn, and struck for the interior of Kentucky. I had no precise plan. My only idea was to make for one of the wildest parts of the country. I had relatives in Lexington and other settled places, to whom I thought it probable my father would write concerning me; so, as I was full of manhood and independence, and resolutely bent on making my way in the world without assistance or control, I resolved to keep clear of them all."

In the course of his first day, he killed a turkey, but the deer ran so he was unable to get a shot. Coming across a gang of wolves feasting on the carcass of a deer, he dispatched the leader and dispersed the rest. His first night was enlivened by a serenade, the product of home talent (the wolves), attracted by the savory turkey which he had served for supper. The depressing effect of darkness passed only with the coming of the morning sun.

"Having breakfasted on the remainder of my turkey," said the youthful hunter, "and slaked my thirst at the bubbling stream, without further dread of panthers, I resumed my wayfaring with buoyant feelings. I again saw deer, but, as usual, running, running! I tried in vain to get a shot at them, and began to fear I never should. I was gazing, in vexation, after a herd in full scamper, when I was startled by a human voice. Turning around, I saw a man, at a short distance from me, in a hunting dress.

"'What are you after, my lad?' cried he.

"'Those deer,' replied I, pettishly, 'but it seems as if they never stand still.'

"Upon that, he burst out laughing. 'Where are you from?' said he.

"'From Richmond.'

"'What! In old Virginny?'

"'The same.'

"'And how on earth did you get here?'

"'I landed at Green River from a broad-horn.'

"'And where are your companions?'

"'I have none.'

"'What! All alone?'

"'Yes.'

"'Where are you going?'

"'Anywhere.'

"'And what have you come here for?'

"'To hunt.'

"'Well,' said he, laughingly, 'you'll make a real hunter; there's no mistaking that! Have you killed anything?'

"'Nothing but a turkey. I can't get within shot of a deer. They are always running.'

"'O, I'll tell you the secret of that. You're always pushing forward, and startling the deer at a distance, and gazing at those that are scampering, but you must step as slow, and silent, and cautious as a cat, and keep your eyes close around you, and lurk from tree to tree, if you wish to get a chance at deer. But, come, go home with me. My name is Bill Smithers. I live not far off; stay with me a little while, and I'll teach you how to hunt.'*

"I gladly accepted the invitation of honest Bill Smithers. We soon reached his habitation; a mere log hut, with a square hole for a window, and a chimney made of sticks and clay. Here he lived, with his wife and child. He had 'girdled' the trees for an acre or two around, preparatory to clearing a space for corn and potatoes. In the meantime, he maintained his family entirely by his rifle, and I soon found him to be a first-rate huntsman. Under his tutelage I received my first effective lessons in 'woodcraft.'

"The more I knew of a hunter's life, the more I relished it. The country, too, which had been the promised land of my boyhood, did not, like most promised lands, disappoint me. No wilderness could be more beautiful than this part of Kentucky, in those times. The forests were open and spacious, with noble trees, some of which looked as if they had stood for centuries. There were beautiful prairies, too, diversified with groves and clumps of trees, which looked like vast parks, and in which you could see the deer running, at a great distance. In the proper season, these prairies would be covered in many places with wild strawberries, where your horse's hoofs would be dyed to the fetlock. I thought there could not be another place in the world equal to Kentucky—and I think so still.

"After I had passed ten or twelve days with Bill Smithers, I thought it time to shift my quarters, for his house was scarce large enough for his own family, and I had no idea of being an incumbrance to any one. I accordingly made up my bundle, shouldered my rifle, took a friendly leave of Smithers and his wife, and set out in quest of a Nimrod of the wilderness, one John Miller, who had lived alone, nearly forty miles off, and whom I hoped would be well pleased to have a hunting companion."

After experiencing a storm in the woods, from which he escaped without serious injury, he arrived at Miller's the following day. His host was called "Blue-Bead Miller," from a blue wart over one eye. He was an old man and a veteran in frontier life. Duval soon became proficient in hunting, as killing a bear attested. He described his associates, his hunting exploits, the social modes of the period and locality, and his participation therein, and altogether life went swim-

* Twenty years ago ex-Senator Thomas C. McCreery, of Owensboro, wrote and published in the *Monitor* newspaper a sketch of Bill Smithers, alias Bill Smothers, which was characterized by the graphic description, the tender sentiment, the humorous vein, and the graceful diction that marked the speeches and other productions of that distinguished gentleman.

mingly on. Finally the spirit of discontent seized upon him. He asked himself:

"Have not I something more in me than to be carrying a rifle on my shoulder, day after day, and dodging around after bears, and deer, and other brute beasts? My vanity told me I had; and I called to mind my boyish boast to my sister, that I would never return home until I returned a member of Congress from Kentucky; but was this the way to fit myself for such a station?

"Various plans passed through my mind, but they were abandoned almost as soon as formed. At length I determined upon becoming a lawyer. True it is, I knew almost nothing. I had left school before I had learned beyond the 'rule of three.' 'Never mind,' said I to myself, resolutely, 'I am a terrible fellow for hanging on to anything when I've once made up my mind; and if a man has but ordinary capacity, and will set to work with heart and soul, and stick to it, he can do almost anything.' With this maxim, which has been pretty much my mainstay through life, I fortified myself in my determination to attempt the law. But how was I to set about it? I must quit this forest life, and go to one or other of the towns, where I might be able to study and attend the courts. This, too, required funds. I examined into the state of my finances. The purse given me by my father had remained untouched, in the bottom of an old chest up in the loft, for money was scarcely needed in these parts. I had bargained the skins acquired in hunting, for a horse and various other matters, on which, in case of need, I could raise funds. I, therefore, thought I could make shift to maintain myself until I was fitted for the bar.

"I informed my worthy host and patron, old Miller, of my plan. He shook his head at my turning my back upon the woods, when I was in a fair way of making a first-rate hunter; but he made no effort to dissuade me. I accordingly set off in September, on horseback, intending to visit Lexington, Frankfort, and other of the principal towns, in search of a favorable place to prosecute my studies. My choice was made sooner than I expected. I had put up one night at Bardstown, and found, on inquiry, that I could get comfortable board and accommodation in a private family for a dollar and a half a week. I liked the place, and resolved to look no farther. So the next morning I prepared to turn my face homeward, and take my final leave of forest life.

"I had taken my breakfast, and was waiting for my horse, when, in pacing up and down the piazza, I saw a young girl seated near a window, evidently a visitor. She was very pretty; with auburn hair and blue eyes, and was dressed in white. I had seen nothing of the kind since I had left Richmond; and at that time I was too much of a boy to be much struck by female charms. She was so delicate and dainty-looking, so different from the hale, buxom, brown girls of the woods; and then her white dress!—it

was perfectly dazzling! Never was poor youth more taken by surprise and suddenly bewitched. My heart yearned to know her; but how was I to accost her? I had grown wild in the woods, and had none of the habitudes of polite life. Had she been like Peggy Pugh or Sally Pigman, or any other of my leathern-dressed belles of the Pigeon Roost, I should have approached her without any dread; nay, had she been as fair as Schultz's daughters, with their looking-glass lockets, I should not have hesitated; but that white dress, and those auburn ringlets, and blue eyes, and delicate looks, quite daunted, while they fascinated, me. I don't know what put it into my head, but I thought, all at once, that I would kiss her! It would take a long acquaintance to arrive at such a boon, but I might seize upon it by sheer robbery. Nobody knew me here. I would just step in, snatch a kiss, mount my horse, and ride off. She would not be the worse for it; and that kiss—oh! I should die if I did not get it!

"I gave no time for the thought to cool, but entered the house and stepped lightly into the room. She was seated with her back to the door, looking out at the window, and did not hear my approach. I tapped her chair, and as she turned and looked up I snatched as sweet a kiss as ever was stolen, and vanished in a twinkling. The next moment I was on horseback, galloping homeward, my very ears tingling at what I had done."

The young lady thus assailed was Nancy Hynes, who resided with her widowed mother at Bardstown. Returning home, he sold his horse and converted all he had into cash, thus amassing nearly four hundred dollars. The parting with "Blue Bead" Miller was a sad one, and relinquishing the life of a hunter, not without regret; but both were accomplished. He footed it back to Bardstown and began the study of the law—a difficult undertaking, as his education was otherwise deficient.

After the lapse of a year, an old lawyer—a friend of his father—called on him to proffer assistance in his studies. At first he was disposed to reject all aid, but thought better of it and accepted. He found profit from a debating society, in which he was able to "hold his own." During the first year of his stay at Bardstown he had led pretty much the life of a recluse. Some married ladies, however, heard him speak at the debating society, and, suspecting him of genius, determined to bring him out. So it happened that one evening at tea, whither he had been invited, he encountered the fair Nancy, whom, indeed, he had once before casually met on the street. The meeting was embarrassing and agitating at first, but this overcome, all things went well. At nineteen he was engaged to be married. After some objection on the part of Nancy's mother, it was

arranged that as soon as he obtained license and was fairly started in business the marriage should occur. At this period his father, who had heard of his whereabouts and plans, wrote advising a collegiate course and offering to defray expenses. He properly consulted his intended bride on the subject. "She sided in opinion with my father," said Duvall, "and talked so disinterested and tenderly that, if possible, I loved her more than ever."

Two years at college was determined on, but at that juncture Nancy's mother died. Thereupon came the question of separating from the doubly-orphaned girl that he loved. This question he easily answered in the negative. He would obtain license as soon as possible, and become her protector. What follows would suffer from the slightest abridgment:

"That very autumn I was admitted to the bar, and within a month afterward was married. We were a young couple, she not much above sixteen, I not quite twenty, and both almost without a dollar in the world. The establishment which we set up was suited to our circumstances—a log house with two small rooms, a bed, a table, a half-dozen chairs, a half-dozen knives and forks, a half-dozen spoons, and everything by half-dozens; a little delft ware; everything in a small way; we were so poor, but then so happy.

"We had not been married many days, when court was held at a county town, about twenty-five miles distant. It was necessary for me to go there, and put myself in the way of business; but how was I to go? I had expended all my means on our establishment, and then it was hard parting with my wife so soon after marriage. However, go I must. Money must be made, or we should soon have the wolf at our door. I accordingly borrowed a horse, and borrowed a little cash, and rode off from the door, leaving my wife standing at it, and waving her hand after me. Her last look, so sweet and beaming, went to my heart. I felt as if I could go through fire and water for her.

"I arrived at the county town on a cool October evening. The inn was crowded, for the court was to commence on the following day. I knew no one, and wondered how I, a stranger and a mere youngster, was to make my way in such a crowd, and to get business. The public room was thronged with the idlers of the country, who gather together on such occasions. There was some drinking going forward, with much noise, and a little altercation. Just as I entered the room I saw a rough bully of a fellow, who was partly intoxicated, strike an old man. He came swaggering by me, and elbowed me as he passed. I immediately knocked him down and kicked him into the street. I needed no better introduction. In a moment I had a dozen rough shakes of the hand, and invitations to drink, and found myself quite a personage in this rough assembly.

"The next morning court opened. I took my seat among the lawyers, but felt as a mere spectator, not having a suit in progress or prospect, nor having any idea where business was to come from. In the course of the morning a man was put at the bar, charged with passing counterfeit money, and was asked if he was ready for trial. He answered in the negative. He had been confined in a place where there were no lawyers, and had not had an opportunity of consulting any. He was told to choose counsel from the lawyers present, and to be ready for trial on the following day. He looked around the court and selected me. I was thunder-struck. I could not tell why he should make such a choice. I, a beardless youngster; unpracticed at the bar; perfectly unknown. I felt diffident yet delighted, and could have hugged the rascal.

"Before leaving the court he gave me one hundred dollars in a bag as a retaining fee. I could scarcely believe my senses; it seemed like a dream. The heaviness of the fee spoke but lightly in favor of his innocence, but that was no affair of mine. I was to be advocate, not judge nor jury. I followed him to the jail, and learned from him all the particulars of his case; from thence I went to the clerk's office and took minutes of the indictment. I then examined the law on the subject, and prepared my brief in my room. All this occupied me until midnight, when I went to bed and tried to sleep. It was all in vain. Never in my life was I more wide-awake. A host of thoughts and fancies kept rushing through my mind; the shower of gold that had so unexpectedly fallen into my lap; the idea of my poor little wife at home, that I was to astonish with my good fortune! But then the awful responsibility I had undertaken! to speak for the first time in a strange court; the expectations the culprit had evidently formed of my talents; all these, and a crowd of similar notions, kept whirling through my mind. I tossed about all night, fearing the morning would find me exhausted and incompetent; in a word, the day dawned on me a miserable fellow!

"I got up, feverish and nervous. I walked out before breakfast, striving to collect my thoughts and tranquillize my feelings. It was a bright morning. The air was pure and frosty. I bathed my forehead and hands in a beautiful running stream, but could not allay the fever-heat that raged within. I returned to breakfast, but could not eat. A single cup of coffee formed my repast. It was time to go to court, and I went there with a throbbing heart. I believe, if it had not been for the thoughts of my little wife in her lonely log-house, I should have given back to the man his hundred dollars, and relinquished the cause. I took my seat, looking, I am convinced, more like the culprit than the rogue I was to defend.

"When time came for me to speak, my heart died within me. I arose, embarrassed and dismayed, and stammered in opening my cause. I went on from bad to worse, and felt as if I were going down hill. Just then, the public prosecutor (Grundy), a man of talents, but somewhat rough in his

practice, made a sarcastic remark on something I had said. It was like an electric spark, and ran tingling through every vein in my body. In an instant my diffidence was gone. My whole spirit was in arms. I answered with promptness and bitterness, for I felt the cruelty of such an attack upon a novice in my situation. The public prosecutor made a kind of apology. This, from a man of his redoubted powers, was a vast concession. I renewed my argument with a fearless glow, carried the case through triumphantly, and the man was acquitted.

"This was the making of me. Everybody was curious to know who this new lawyer was, that had suddenly risen among them, and bearded the prosecuting attorney-general at the very outset. The story of my debut at the inn, on the preceding evening, when I knocked down a bully and kicked him out of doors for striking an old man, was circulated with favorable exaggerations. Even my very beardless chin and juvenile countenance were in my favor, for people gave me far more credit than I really deserved. The chance business which occurs in our country courts came thronging upon me. I was repeatedly employed in other causes, and, by Saturday night, when the court closed, and I had paid my bill at the inn, I found myself with a hundred and fifty dollars in silver, three hundred dollars in notes, and a horse that I afterward sold for two hundred dollars more.

"Never did miser gloat on his money with more delight. I locked the door of my room; piled the money in a heap upon the table; walked around it; sat with my elbows on the table, and my chin upon my hands, and gazed upon it. Was I thinking of the money? No! I was thinking of my little wife at home. Another sleepless night ensued; but what a night of golden fancies and splendid air-castles! As soon as the morning dawned I was up, mounted the borrowed horse with which I had come to court, and led the other, which I had received as a fee. All the way I was delighting myself with the thoughts of the surprise I had in store for my little wife, for both of us had expected nothing but that I should spend all the money I had borrowed, and should return in debt.

"Our meeting was joyous, as you may suppose; but I played the part of the Indian hunter, who, when he returns from the chase, never for a time speaks of his success. She had prepared a snug little rustic meal for me, and while it was getting ready, I seated myself at an old-fashioned desk, in one corner, and began to count over my money and put it away. She came to me before I had finished, and asked me who I had collected the money for.

"'For myself, to be sure,' replied I, with affected coolness; 'I made it at court.'

"She looked at me for a moment in the face, incredulously. I tried to keep my countenance, and to play the Indian, but it would not do. My muscles began to twitch; my feelings all at once gave way. I caught her

in my arms, laughed, cried, and danced about the room like a crazy man. From that time forward, we never wanted for money."

He was elected to Congress in 1813, serving one session. In 1823 he was appointed by President Monroe Governor of the Territory of Florida. He was reappointed by both Presidents Adams, and again by Jackson, serving until 1834.

He began the practice of law in 1804 at Bardstown, where Grundy and Rowan were already in the full tide of professional renown and success. After he entered political life he seems to have given over professional pursuits. His posthumous fame indeed rests rather on his colloquial powers than on his forensic achievements.

During the Texan war with Mexico he was subjected to a great sorrow, by an event that thrilled the country as never before. The Texans under the lead of Houston were struggling for independence. Their valor and heroism excited sympathy and admiration throughout the United States, and nowhere greater than in Kentucky. Governor Duval had two sons (Burr and John), the first of whom recruited one hundred men of the flower of Nelson county youth—his brother John being of the number—and with them joined the Texan army. They were all captured with Fannin's men at the affair of the Alamo, and were treacherously slain with their ill-fated leader, save John Duval and a deaf man by the name of Mason, who alone of the one hundred returned.

Governor Duval was, as already intimated, a fascinating and fluent talker. One informant relates that whenever or wherever he stopped, on the street or elsewhere, a crowd gathered to listen. During his residence in Florida he was accustomed to send to his old Nelson friends graphic accounts of his residence in the land of flowers, and of the Indian hostilities then pending. Another venerable gentleman thus speaks of him: "I knew Governor Duval and saw him frequently at Hartford. I never knew a more charming conversationalist. It is impossible to exaggerate his powers in this respect. If he emerged from his lodgings the public seemed to have its eye upon him. The moment he paused an admiring company would gather around. He did all the talking, and his hearers never wearied."

Said Mrs. Helm: "I remember Governor Duval. He was fond of singing and sang well himself. I recall the old song, 'John Brown's two little Indian boys,' as rendered by him for my amusement in my childhood. He was a most charming man socially; but my father (Mr. Hardin) thought him deceitful."

Another who knew him contrasted him with Dr. Christopher Rudd. "Rudd had an exhaustless fund of witty anecdotes and his humor was exuberant. Duval's charm was in graphic narrative and vivid description. I once made the journey of several hours in a stage-coach from Bardstown to Springfield. It was at that day by no means a smooth one. Duval was my companion, and so completely was I fascinated by his uninterrupted conversation that I was startled when the journey ended, so entirely had I been oblivious of time, distance, and surroundings."

Duval and Washington Irving contracted a warm friendship—the former occupying a place in the social circle not unlike that occupied by the latter in the world of letters.

Politically, Governor Duval supported the Jeffersonian school of politics. He advocated the establishment of a national bank in 1814—in opposition to the policy of Mr. Madison—but which the latter approved two years afterward. He favored the vigorous prosecution of the war of 1812, and raised a company of six months' men for the service.* When, at the close of Mr. Adams' administration, Jeffersonian republicanism had branched into Whigs and Democrats, Governor Duval adhered to the latter, and became a partisan of Jackson.

He was a manly, vigorous speaker. His reported speeches are characterized by exalted sentiments and a fervid patriotism. He added to superior talents the virtue of unswerving integrity and all the genial graces that mark the perfect gentleman. Late in life he was described as a short, fleshy, heavy-set man, not over five feet six inches high, flabby cheeks, and an inveterate tobacco chewer. In 1848 he moved to Texas. He died in Washington City, March 19, 1854.

IV.—Ben Chapeze.

Among the leaders of the Bardstown bar in Mr. Hardin's time, for over twenty years, ranked Benjamin Chapeze. He was born at Trenton, N. J., March 27, 1787. His father, Dr. Henry Chapeze, was a native of France. He came to America during the revolutionary war, and held the post of surgeon in the American army during that period. After peace he married Sarah Kenny, a native of Ireland. At an early day he removed to Bardstown, where he resided until his death, which occurred about 1810. His son was educated at the school of the noted Priestly. In his early manhood Ben betook himself to the occupation of a wagoner.

*The well-known Duff Green enlisted in this company. See "Facts and Suggestions."

In these days of steamboats and railroads there is little conception of the large number of persons who pursued the business of wagoning in Kentucky in early times. From the general depots for goods on the Ohio river merchandise was transported by wagons to all the interior towns, many of which were busy centers of trade. On one occasion a company of five wagons started from Louisville to Lexington, one of which was driven by young Chapeze. The roads were bad and his load was top-heavy. In eight or ten miles of his destination his wagon overturned, injuring its contents to some extent. The merchant at Lexington, to whom the goods belonged, sued him for damages and levied an attachment on his team. Chapeze was about twenty-three years of age, and, though he had never looked into a law book, he had some character as a talker and reasoner. His fellow-teamsters had confidence in his defense and his ability to make it, but knowing his great diffidence they did not scruple to spur his courage with liquor. He argued his own case with such ability that he easily defeated his adversary. May 7, 1812, he married Elizabeth Shepherd, daughter of Adam Shepherd, one of the early settlers of Kentucky.

Shepherd was the first man who lived outside a fort in Bullitt county. He settled Shepherdsville, and for him the town was named. Elizabeth Shepherd proved a worthy helpmeet of a worthy man. She recognized that talent in her husband which his own modesty prevented him realizing. It is said, too, that he had no natural liking for books nor any inclination to become a lawyer. His wife was more enterprising and ambitious. She had great influence over him, and exerted it to turn him to the law. After his marriage he had settled on a small farm in Bullitt county, which he cultivated. He was doubtless not an altogether thrifty farmer, and from that or some other cause he became involved in a lawsuit. He was defendant in an action before Wilford Lee, Esq., a justice of the peace. Lee was a sensible man and a good citizen, and, as will be seen, was of exceedingly generous impulses.* As in the Lexington case, he again conducted his defense. He was without law books, and would have been ignorant of their use if he had had them. He seems to have intuitively appreciated the importance of precedent and authority. For this purpose he produced a Bible at the trial, from which he read, and quotations from which he incorporated into his argument. His argument won his case and deeply impressed Mr. Lee. After the trial the latter

* Wilford Lee was the father of the late Colonel Phil Lee, a distinguished member of the Louisville bar.

urged Chapeze to turn his attention to the law. He responded his poverty, that a family depended on him for support, that he had not even money enough to buy books. Lee asked how much the necessary books would cost, and being informed about three hundred dollars, he offered to loan the money. Chapeze was reluctant to incur so serious a liability, apprehensive of his ability to repay. Lee was, however, generously persistent, professing his willingness to take the hazard. Between the arguments of Lee and the persuasions of Mrs. Chapeze, all hesitation was finally overcome, the money was borrowed, the books were bought, and study begun.

So far as he had direction in his legal training, Judge John Rowan, of Bardstown, was his preceptor and friend. But his studies were chiefly conducted on a small farm on Long Lick creek in Bullitt county. Here he lived in a log cabin with his family and studied two years. He utilized his time—working at his books of evenings and mornings, at the noon cessation of labor, and even in the field when stopping for his horse to rest. Of the profit from the cultivation of the Long Lick farm no record remains—but the result of a two years' cultivation of a vigorous intellect was his admission to the bar. This was in 1815.

He located first in Shepherdsville, where he continued two years at practice. He then removed to Elizabethtown, where he remained about the same period. In 1820 he located at Bardstown. After removal to Bardstown his career was eminently successful. He rode the circuit—practicing outside of Nelson, in Meade, Hardin, Bullitt, Breckinridge, Spencer, Washington, and Marion counties. He had a practice more or less extensive in all these counties, as well as a large and lucrative business in the Court of Appeals. The reported decisions of that court show not only his numerous retainers, but the curious reader will find evidences of his superior lawyership in his petitions for rehearing formerly published with the decisions. He was employed in many celebrated cases, in all of which he acquitted himself with distinguished credit. One who heard his argument in the noted case of DeParcq vs. Rice says his effort was surpassed by none of the counsel engaged—among whom were Ben Hardin, J. J. Crittenden, C. A. Wickliffe, and John Rowan.

He was a man of great originality and strong natural powers. He was not extensively read outside of his profession. Of the law he was a painstaking, hardworking, and thorough student. The author has seen a folio manuscript volume of five hundred pages in Mr.

Chapeze's handwriting embracing a general digest of the law. It was formerly the mode for genius to conceal its debt to books—undoubtedly a weakness. The impression was created, and tradition has carefully preserved it, that Mr. Chapeze owed little to books. In truth, however, he owed just as much as any equally great lawyer. He possessed a rich, sonorous voice. A country boy, captivated by it, found no other way to describe it than that it sounded "deep as if coming up and out of a hogshead." His style of oratory was ornate and his tendency was to use words of Latin origin. In his last days his mind grew metaphysical and his public speeches lost some of their earlier fire and popularity.

He was remarkable for great integrity of character. He was very generally called the "honest lawyer," from his candor and honesty. He abounded in charity and magnanimity. One who knew him, and was qualified to judge, summed up by calling him a "splendid man." Another speaks of him "as a lawyer of great ability and a man of singular worth and purity of character." "He was an industrious lawyer," said Governor Wickliffe. "His oratory was diffuse, but he had considerable power before a jury, especially in cases where he could array the under-growth against the upper-growth of society. In this way he was a man of great effectiveness."

His dark complexion, long raven hair, and lustrous black eyes bespoke his French origin. He would have readily passed for a native of France, notwithstanding his moiety of Irish blood. He was a large man, of fine physique and presence. He was neat in dress and person, and courteous in manner. He was not much of a politician, having little inclination or ambition that way. He was twice an old court representative from Nelson in the Legislature—the last session a colleague of Mr. Hardin. On the close of that struggle he joined the Jackson Republicans—about that time called Democrats—who, for the most part, in Kentucky, had been new court men. In 1828 he was chosen elector on the Jackson ticket, and cast his vote for "Old Hickory." This was the limit of his political career.

In September, 1839, he attended his last court at Elizabethtown. He was engaged in defense of a man charged with murder. The evidence being concluded, Mr. Chapeze was engaged in argument. After speaking two hours he fell, overcome by exhaustion. He was carried to his hotel, and medical aid procured. A consultation of the physicians being held, blood-letting was agreed on. Mr. Hardin hearing of it very earnestly opposed it. "Don't let them bleed you, Ben,"

said he, "don't let them bleed you; you'll die if they bleed you. If you submit to it, I advise you first to have your will written." Mr. Chapeze replied that his will was already written, but promised to resist the bleeding. This promise, however, he did not keep. He was bled, as the practice then was, and at the end of nine days he was dead. His death occurred September 26, 1839.

Mr. Chapeze's wife was a devout Catholic all her life, and reared her children in that faith. It was, however, only a short time before his death that he was received into that church. He died a recipient of its consolations.

V.—John Hayes.

John Hayes was the son of Thomas Hayes, a small farmer of limited means, in Nelson county. His mother's name was Agnes. He was born in Lunenburg county, Virginia, in 1793, and removed in infancy, with his father's family, to Kentucky. After acquiring a fair education, a youthful talent for oratory turned his attention to the bar. He became a law student in the office of Judge John Rowan, at Bardstown, and in due time received license to practice. This latter event occurred June, 1814.

An old Scotchman, one Dr. McConochie, wrote a sketch in which he says that Hayes had little assistance in his early studies, "that he was an unlicked cub of the wilderness."*

During his student days, so gossips said, he became enamored of a daughter of his preceptor. His affection was returned, and, after his admission to the bar, he ventured to ask Judge Rowan's consent to their marriage. The latter was an imperious, proud man, to whom such an alliance was distasteful, and he insultingly refused. That circumstance marked the beginning of a sad era in young Hayes' life. Before that time he had always been sober and exemplary in habits. The story goes that, crushed by disappointment, he immediately took the stage-coach for Louisville, where for weeks he sought solace in deep and protracted dissipation. Friends at length brought him home and sobered him, and started him afresh in life. He immediately took, in popular esteem, high rank professionally. Clients came whenever he was in condition to attend to business; but these periods were of short and uncertain duration. As life went on, his power of self-control grew weaker, and finally the time came when he was only able to break off debauch when assisted by his friends.

* Leisure Hours, by James R. McConochie, published at Louisville in 1846, contains a sketch of John Hayes.

Colonel Wright, an old and respectable citizen of Bardstown, was his fast friend in many troubles, who often took him, helpless and filthy, from the gutter, washed him, sobered him, and dressed him. Thus renovated, he would start into practice at a term of court, showing wonderful resources and ability in the management of cases, and capacity to compete with the great lawyers he encountered. But these redeeming intervals rapidly waned. He was a member of the Legislature, from Nelson county, in 1819. He was once an unsuccessful candidate for Congress against Mr. Hardin.

It was, however, his wonderful oratory that brought him fame and secured him posthumous renown. An address delivered by him at Bardstown on the anniversary of Washington's birth in 1829 has been described as of surpassing eloquence. Not only were the young swayed like the reed before the storm, but old men and women wept like children. "It has been my fortune," said one who was present, "to have heard some of the finest orators of this country and of England, but never have I witnessed anything like the enthusiasm with which this address was received by the audience. It broke out at the close of every sentence in long and reiterated plaudits."

On another occasion he so transported a Shelby county jury as to obtain the extravagant verdict of fifteen hundred dollars for injury to a horse. The court, as a matter of course, set it aside. The following incident illustrates the versatility of his powers: One McCown had undertaken to build a two-story jail in Nelson county. He was not only a good workman, but an exceedingly upright man. But he miscalculated the expense of his undertaking. On completing the first story he discovered that he had already expended for labor and material the entire sum he was to receive for the whole building. Notwithstanding this, he continued his labor, completing the jail in the best style of workmanship. At the succeeding fiscal court of the county the justices proposed to reimburse him for his actual outlay above the sum he had received. Hayes happened to be present while the matter was under consideration, and spoke against it so eloquently that the claim was unanimously rejected. It so happened that Hayes had long been an honorary guest of the principal hotel of Bardstown, whose proprietor was a son-in-law of McCown. After the rejection of the claim, the landlord charged Hayes with ingratitude; that he had furnished him board and drink without pay; but told him he would shelter him no longer. Where Hayes spent that night was unknown. Next morning, however, he again appeared in the fiscal court, moved

a reconsideration of McCown's claim, and advocated it so eloquently that it was allowed without dissent.

He rarely got so deeply intoxicated he could not talk intelligently. One night with a hilarious crowd, and far gone himself, he was called on to preach a sermon. The crucifixion was his subject, and so eloquently impressive and solemn did he become that, as an eye-witness expressed it, "he had the last drunken devil bathed in tears." Few more eloquent men ever lived in America; but Mr. Hardin, who judged all eloquence by the solidity of the argument, said he lacked tact, and that he would always say some foolish thing that could be turned against him. He was serious and solemn in manner. He never laughed. His invective has been described as terrific, his pathos as melting.

He was rather tall, slender, and spare in person, of fair complexion, fine intellectual development, with commonplace face (save when speaking), light hair, and blue eyes. In repose there seemed some indescribable deficiency in expression. His voice was of remarkable compass, and had about it the attraction of a musical instrument. Some one has described it as having trumpet notes. His distinctness and power of enunciation were especially marked. A graceful manner, a fluent diction, an impressionable and glowing nature, and that occult thing called personal magnetism, these, added to oratorical gifts, marked a combination and a form on which, indeed, the gods might have set their seal.

He was imitated and quoted, says McConochie, "by students and other aspirants after forensic fame," a reliable testimony of his merit. Henry Crittenden, in his canvass for Congress against P. H. Pope in 1829, met his competitor for debate at Taylorsville. In the course of his address he was accustomed to read many printed documents. His voice being husky from repeated speaking, he asked John Hayes, who was present, to read for him. He was so charmed with Hayes' extraordinary elocutionary powers that he ceased to speak. He managed to have Hayes consume all his time reading documents.*

"I knew a young man," said Mr. Hardin, referring to Hayes, "who was the finest orator I have ever heard. Great God! how the boys would gather around him at a battalion muster. I have seen him pour in the hot shot, one after another, until he would set the whole battalion in a flame." He was not only a prodigy as an orator,

* This incident, with others, was related to the author on an Ohio river packet in May, 1885, by that interesting and accomplished gentleman, the late Andrew J. Ballard, of Louisville, at the time en route to visit old friends at Owensboro. In the August following he was dead. "If we did but know," says Dr. Holmes, "if we did but know how to question these charming old people before it is too late."

but had a respectable talent for poetry. McConochie speaks of the *Washingtoniad*, an unpublished poem by Hayes, as creditable to his muse. His colloquial powers were excellent and diversified, amusing the lively with his wit, entertaining and instructing the serious with his knowledge, the scholar with his learning, and the politician with his sagacity. His powers of memory were remarkable. On one occasion, a bet was made that he could commit any chapter in the Bible in fifteen minutes. One of the wagering parties went in search of him. He was found in a state of maudlin drunkenness. He was informed of the bet, and a Bible furnished. The first chapter of Matthew was selected. In the required time he had repeated the genealogical line running from Adam to the Saviour.

About 1815, he had a personal rencounter with James Guthrie, subsequently distinguished for many important public services. It occurred at Bardstown. Guthrie and Hayes, both young lawyers, had offices in adjoining rooms, with doors opening on the street, in front, and also on a back area. In the rear of the premises Hayes trespassed on Guthrie's domain, which the latter forbid, threatening to cowhide him if he did not desist. The trespass was repeated, and Guthrie fulfilled his threat. Hayes, being the inferior physically, was unable to resist the gross indignity. He, however, provided himself with a pistol, and shot Guthrie on sight, inflicting a severe wound. Collins says the latter was confined for three years from its effects, and attributed the difficulty to political differences. The author's informant thought its foundation was a grudge growing out of professional rivalry.*

At this period of his career, Hayes had not wholly surrendered to the indulgence that subsequently wrecked him. The court records in Nelson county throw not a little light on certain pages in his life. In less than a year after he came to the bar—March 22, 1815—there is an entry that John Hayes and Charles A. Wickliffe be fined ten pounds each, "for contempt in the presence of the court." It is a reasonable conjecture that this joint offense resulted from a personal altercation in the sacred and peaceable precincts of the temple of justice. Shortly afterward, Wickliffe's fine was remitted, and that of Hayes abated to five dollars, showing, perhaps, that the latter was the more culpable.

After an interval of two years—during which the silence of the records may argue proper decorum, on October 17, 1817—after three successive fines had been entered against Hayes, of ten dollars each,

* The venerable Ignatius Mattingly, of Bardstown.

for contempt, he was committed to jail for six hours. That these contempts were involuntary or unintentional seems fairly to be inferred from the subsequent remission of the fines. He, however, suffered the ignominy of the imprisonment. The year following there appears but one fine of five dollars. In July, 1819, two fines for contempt were entered—twenty and ten dollars—and, to cap the climax of misfortune, he was suspended from practice for six months. Again, however, the court relented, and the order of suspension was revoked and the larger fine remitted. Here these mournful entries terminate, and with them, substantially, ended his professional career—a career that had been brief, brilliant, but erratic. The simple story that may be deduced from these formal records of sin and repentance—of reformation and relapse—of desperate strivings for manly rectitude and helplessly falling away—is more vivid and pathetic than words can make it.

Hayes was melancholy from childhood. His brother George always maintained the belief that John was a lunatic. His father's will was set aside for mental defect—Mr. Hardin, counsel in the case, characterizing the elder Hayes as "wind-shaken." The metaphysical McConochie admitted that John betrayed "symptoms of real madness." He diagnosed it as a "hypochondriacal affection which he inherited from his paternal ancestors." This natural defect in his latter days was exaggerated by an irregular and dissipated life so that before the end, this erring child of genius was a physical, mental, and moral wreck.

The cause and manner of his death were long a matter of uncertainty. He was traveling from Bardstown to Bloomfield on a summer day. Comparatively sober when he set out, he called at a still-house by the way and soon was drunk. Next morning, July 24, 1830, not far away his dead body was found by the roadside. Human hair and blood on the end of a rail projecting from a fence and a fracture of the skull seemed to indicate the manner of death; yet it was uncertain whether he had, in a mad moment, inflicted the injury himself or been thrown by his horse. The shock to the public mind, over the question as to either theory, soon grew to be a matter of indifference.

But "murder will out." Years afterward a man died in Nelson county who, in the article of death, confessed that he had murdered Hayes. He was engaged as the distiller at the still-house where the ill-fated man had his last debauch. In his drunkenness the distiller discovered some money which he took. He then killed Hayes by a

blow on the head with a hammer, and hid his body till nightfall. Conveying it to the spot where found, he ingeniously prepared the appearances of suicide or accidental death. Poor Hayes! His unhappy life was a miserable failure. His large endowment of genius was entailed with misery. Yet it is remarkable how the memories of many virtuous, sober, and steady-going men of his day, who achieved so much more, have been long covered by the placid waters of oblivion, while tradition lovingly treasures reminiscences of the silver-tongued orator and never wearies of the story of his tragic fate.

VI.—Charles Anderson Wickliffe.

Governor Wickliffe, the youngest of the nine children of Charles and Lydia Hardin Wickliffe, was born June 8, 1788, in a log cabin on Sulphur run, a branch of Cartwright creek, six miles south-west of

WICKLAND, THE HOME OF GOVERNOR WICKLIFFE, AT BARDSTOWN.

Springfield, Ky. His mother was a daughter of Martin Hardin, of Fauquier county, Va., and sister to Sarah Hardin (Ben Hardin's mother), and to Colonel John Hardin, referred to heretofore in these pages. His parents were Virginians by birth, who had removed to Kentucky about 1786. His early education was limited to the scant opportunities of his time and locality. In 1804–5 he spent a year at Bardstown, under the tuition of Rev. Dr. Wilson. The ensuing nine months he was instructed by Rev. Dr. James Blythe, acting president

of Transylvania University. He studied law with Martin D. Hardin, at Frankfort, and on admission to the bar, located at Bardstown.

After the war of 1812 began, Mr. Wickliffe quit his office and entered the military service as a private. He was soon appointed aid to General Winlock, but performed no active duty. He was consecutively elected for 1812 and 1813 member of the Legislature from Nelson county. When tidings of the battle of River Raisin reached Frankfort, Governor Shelby, at the instance of the Legislature, took the field and called for volunteers. Governor Wickliffe was among those who responded, and received the appointment of aid to General Caldwell. He rendered valuable services at the battle of the Thames.

In 1816, he succeeded Mr. Hardin as Commonwealth's Attorney in the Bardstown district. In 1820 and 1821 he was again a member of the Legislature. In 1823, he succeeded Mr. Hardin in Congress from the Bardstown district. His congressional service at this time, by successive re-elections, continued until 1833. When the election for President, in 1825, was carried into the House, he voted for Jackson—in opposition to the majority of his colleagues. This act increased his majority the succeeding election two thousand votes. He was elected by the House as one of the managers of the impeachment of Judge Peck before the Senate, and made one of the ablest speeches in the trial. In 1833, 1834, and 1835, he was again a member of the Kentucky House of Representatives. In 1834, he was elected speaker after an animated contest—over Daniel Breck and John L. Helm. In 1836, he defeated Elijah Hise, the Van Buren candidate for lieutenant-governor, by a majority of thirty-three hundred and thirty-eight. On the death of Governor Clark, which occurred October 5, 1839, Mr. Wickliffe then became governor for the rest of the term.

He was appointed postmaster-general in President Tyler's cabinet, September 3, 1841, and so continued until the end of that administration. In 1844, voyaging from Old Point Comfort to Baltimore, he narrowly escaped death at the hands of a lunatic, who struck him twice in the breast with a clasp knife. In 1845, he was sent by President Polk on a secret mission to Texas, connected with the annexation of that republic. February 18, 1841, in the contest for United States Senator, resulting in the choice of James T. Morehead, Governor Wickliffe received twenty votes.

In 1849, he and Mr. Hardin were delegates from Nelson county to the constitutional convention. He was an active and influential mem-

ber of that body, taking advanced views of constitutional reform. A decade before, he had opposed a constitutional convention, which afforded the noted Thomas F. Marshall, in his "Old Guard" serial, an opportunity for assailing him for inconsistency. It was during his service in the convention that he took occasion to review and defend his public career. Mr. Hardin, in part, provoked this. In speaking in vindication of his own political course, Mr. Hardin had said "that it had been so traced that any man can see and read it. But, sir, I do not attempt to trace the position of my honorable colleague. He has the advantage of me in that particular. If I were asked in what part of the heavens the Aurora Borealis dwelleth, how could I tell? As the poet says:

"'Like the Borealis race
That flits ere ye can point its place.'"

Mr. Wickliffe's reply to these and similar insinuations of political instability has now grown to be of historic interest, and is worthy a place in this sketch. He spoke as follows:

"I was elected a member of Congress from what was called the Louisville district, amidst the conflict for the presidency of the United States then waged between those distinguished individuals, Clay, Crawford, Jackson, Adams, and Calhoun. In that contest, so long as the statesman from Kentucky was in the field, I was for him, as was at that time nine-tenths of the State of Kentucky; and I have no doubt the gentleman (Mr. Chrisman), if old enough to take part and cast his vote, voted for him in that contest. This election for the office of President, as neither candidate received a majority, devolved on the House of Representatives, of which I was a humble member—one of the twelve delegates from this State. As such I was called upon to cast the sovereign voice of Kentucky between General Jackson and Mr. Adams. At that point, perhaps, commenced, in estimation of some who never change, my political sins. Independent of my own judgment as to what was the voice of Kentucky, and particularly to those who had sent me to proclaim their voice, I was furnished with official light by legislative resolution. The citizens of Kentucky were undivided in sentiment. The popular voice everywhere proclaimed that, as between Jackson and Adams, it was the duty, aye, the bounden duty of the delegates from Kentucky to cast her vote against Adams and in favor of Jackson.

"We were not left to conjecture this opinion, and decide upon our duty by our own judgment; but your Legislature was then in session, and I have the resolution they passed and the speeches made by the statesmen of that time, instructing me and calling upon me, as one of the delegates charged with that high trust, by considerations that it is not necessary for me to state,

to cast the vote as I did give it. It was in accordance with my own judgment, and I gave it with pleasure, but that, though, has caused me trouble—yet no regret, no tears. When I returned home to my constituency, to give an account of my stewardship in thus carrying out their will and the orders of the Legislature, I found the very men—yes, sir, men who charged me with political inconsistency, who had been instrumental in procuring this legislative mandate, whose speeches in the Legislature I hold in my hand—upon the stump, in my county and district, attempting to destroy the prospects of a young politician, to undermine the confidence of his constituency in him, because he had acted honestly, and obeyed the dictates of the Legislature, and, still higher, the commands of public sentiment upon him.

"My constituency continued to return me to Congress for ten years, and as you know, Mr. President, and you can do me the justice to say, longer than I desired to remain. There sprung up in my pathway, during a portion of my political pilgrimage in the national councils, questions about which at one time there seemed to be no division among the politicians or the population of this State. I allude to the necessity of the United States Bank. I looked upon the power of Congress to charter an institution of that kind as a question which had received the settled opinions of the people, or, as lawyers term it, it was *res adjudicata*. It was only then a question of public policy and necessity. I voted to re-charter that bank because I labored under the belief of its necessity, inculcated by events which took place in the war of 1812, and the consequent evils growing out of it, a deranged and prostrated paper currency. I had looked to that institution as a great purifier and regulator of the State paper currency. I thought General Jackson committed an error when he vetoed the bill to re-charter that bank. Was I alone in Kentucky in this opinion among those who had voted with me, and who with me contributed to the elevation to the presidency of that great man? I thought him wrong in some measures that succeeded the veto of the act to re-charter that institution, and this difference upon a question of policy respecting the currency separated me from what was then called the Jackson party in Kentucky. And during the excitement of subsequent elections and contests in the Commonwealth of Kentucky, this difference of opinion necessarily called down upon me the denunciation of the partisan press of the day. I defended myself, and in this defense I have no doubt I often dealt blows as hard as those which I received, and probably as often undeserved.

"Mr. President: Sixty winters have made the impress of their frosts upon my head, and men of but to-day, and others, whose years have not improved their habits or softened their feelings, take pleasure in perpetuating their names by connecting them with political sins imputed to me. Among their charges, sir, I understand that the delegate has referred to the fact that I joined the administration of Mr. John Tyler.

"It is true, sir, that without any knowledge on my part, and without the slightest expectation, with no personal desire or political ambition to tear myself from the retirement of a quiet and happy home, upon the disruption of the cabinet of Mr. Tyler, with the particulars of which I have nothing to do—and I would scorn to introduce them into this House, and harrow up the feelings or perpetrate an outrage on the humblest individual in this community—unexpectedly, I received the appointment of postmaster-general, accompanied by a private letter from that gentleman, with whom I had lived and been associated at Washington for many years upon terms of the utmost personal kindness, and which, I suppose, begat in his bosom a confidence in my integrity and capacity for the duties of one of the most laborious departments belonging to the Federal government. He placed my acceptance of that commission on the ground of private friendship to him, and without reference to political considerations. At the sacrifice of much of individual comfort and individual convenience, I had the temerity, without consulting the delegate from Wayne, or the other gentleman in this House who thinks with him, to accept that office and discharge the duties to the best of my humble capacity. What the judgment of public sentiment may be on my official acts and official duties, I will leave to be decided by my country, whose province it is, content to meet its decision.

"It is not my purpose, nor is it necessary that I should speak of the measures of that administration. When the member from Wayne himself shall pass from this stage of existence, when perhaps there will be left scarcely a gravestone to tell the passer-by who lies beneath the sod of the valley which covers his remains, the results of that administration, the consequences which flow from its measures, guided by no selfish or sectional policy, looking alone to the great interest of our great and common country—an administration standing amid the crash and rush of both great political parties for a time, each seeking who could be most powerful to crush it, disgrace its head and his humble associates—I say, when he shall have passed from the memory of man, and the historian shall come to record some of the events which have stamped and given it character—aye, sir, and I might almost say a new and independent destiny to our common country, and opened up to the world, broad and wide, her shores, her enterprise, and liberty to the oppressed of all the world—justice will be done to those whom it is the pleasure of others now seeking distinction to denounce and condemn.

"Sir, during my association with that administration, the question of the annexation of Texas was presented. I saw, or, at least, I thought I saw, that, unless the United States acted, and acted promptly and with united public sentiment and political energy, our western limits would be circumscribed by the little stream of the Sabine, that we should have an empire hostile to our institutions spreading along the most defenseless portion of our southern frontier, the Southern slave-holding States. I thought I saw in the

annexation of that country an almost absolute necessity, if we desired to deserve and promote the prosperity, and give quiet to the planter and cotton grower of that portion of the Union. I did not act alone. I acted, it is true, in accordance with my own judgment, but I always like to have that judgment aided by the counsels of older heads. I consulted some of these from my own State. Their advice to me was, by all means, to accomplish the annexation of Texas; we must have it, and we ought to have it. And I was told that now was the time to take it. I need not say who they were; there is one, at least, present will bear witness. Sir, my surprise was great, I confess, when I looked across the mountains and saw the political conflict of the presidential race of 1844, to find the very men who had advised me to the measure of annexation, on the stump denouncing it as a measure wicked, unholy, and unworthy of our people. Some of these men now arraign me by a charge of a change in my political sentiments. It was during my administration of the post-office department, I became satisfied that the opinions I had entertained on the necessity of a bank of the United States, as a government agent, was founded in error. In that department alone I found myself able to collect, by dimes and half-dimes, a revenue of between four and six millions of dollars, and safely to keep and disburse it without a United States bank. And the records of our country will not show in that department the loss of a single dollar by defalcation while I had the honor of managing its finances, save in the case of one postmaster, in the region of country near the locality from Wayne, I know not exactly where, whom I detected in having altered his post bills, and thus causing the loss of about forty dollars a year for some years.

"Mr. President, it will be remembered that during the years 1841 and 1842–3, the bank of the United States, which had originally charmed a portion of my native State to its support—the supposed necessity of whose existence had led me to believe that a great error had been committed by General Jackson, in the exercise of the veto power—exploded. When the stock-holders entered its vaults and opened its books, examined its papers, and exposed its financial operations for a series of fifteen or twenty years, there was an exposure of political corruption and fraud in the financial operations of that bank, which stunk in the nostrils of the nation; transactions which had been concealed from a committee of Congress, sent to make an investigation into the condition of the bank; at the head of which was McDuffie and Colonel Johnson, of our State. Yes, Mr. President, so concealed as to induce that committee to report that all that had been charged against the bank was untrue and false. I believed it. But when the books were opened to the stock-holders, they found their pockets robbed, the country cheated, and themselves bankrupt. Yes, sir; there were children of a citizen of my own county, whose whole property was invested in that institution—some thirty or forty thousand dollars—robbed of every dollar

of their estate. But that was only a drop in the bucket, compared with other cases of loss. I became satisfied, on looking into the transactions of the bank thus exposed, and on a review of my former opinions on that subject, and the opinions of that man, whose judgment was more matured, and different from mine, and stronger, of course, and better informed, that he was governed by the highest sense of justice in vetoing the bill; that he was right and I was wrong. And I had the boldness, the temerity, folly, perhaps, in the opinion of some, that feeling thus, not only to act upon a sense of right, but to acknowledge it. Who among us now advocates a charter of a United States Bank?

"I am not governed or influenced by the course of policy which has governed and influenced others. Whenever I am satisfied that I am wrong on a political question, a question of policy, or one involving a principle, I take the consequences of acknowledging that error. It is more magnanimous, more consoling to my conscience than to persevere in error. And when the annexation of Texas was made the leading question upon which the contest for the presidency of 1844 was made to turn, I had no choice but the choice which my judgment dictated, and that was, that the annexation of that country to the United States was demanded by the highest political and self-preserving principles in reference to our future destiny; and if my venerated father, then reposing in his grave, had been living and a candidate for the presidency, and had opposed the annexation of Texas, I would have cast my little mite in the scale against him. This contest again brought me into political union with the Democratic party. My principles of government have ever been democratic, and I hope ever will be. They have not, nor will not be made to depend upon expediency, or the choice of a president. The charge of inconsistency, come from what quarter it may, will not change the honest purpose of my soul, a desire ever to do right. Mr. President, I am in one respect like King Lear, in the play. 'Tray, Blanche, and Sweetheart, all bark at me.' Bark on, I shall not calm you by whistling.

"I beg pardon of this convention for thus throwing too much of my own affairs and political history before it. I could not do less. I hope I shall have no occasion again to do it, and I can assure the delegate who has been the immediate cause of thus compelling me to do what I most sincerely regret the necessity of doing, that I had no intention, purpose, or design of casting censure upon him, or wounding his feelings. My own self-respect and a regard for the decorum of this body forbid that I should, without cause, violate its sense of propriety." *

In 1850 Governor Wickliffe, in connection with the distinguished lawyers, Squire Turner and S. S. Nicholas, was appointed by the State Legislature to revise the statutes. This duty was performed, and the Legislature having failed to provide for their publication by the day

* Constitutional Debates of Kentucky, page 525.

fixed by law for them to go into operation, Governor Wickliffe arranged therefor on his own responsibility.

In 1861 he took an active part in all pacific measures to avoid civil war. January 29th he in connection with others was sent as commissioner for Kentucky to a peace conference at Washington City, in response to an invitation by the Virginia Legislature. The peace conference was, however, fruitless, and so was the subsequent Border State Convention, to which he was elected a member in May following. At a special election for members of Congress, June 20th, Governor Wickliffe was elected, receiving 8,217 to 2,719 cast for General Read. In Congress he acted with the minority, and did what little he might to protect the rights of his constituents from invasion by the Government. In 1863, at the solicitations of prominent citizens, he became a candidate for governor against Colonel Bramlette, the Union or Government candidate. Throughout the State the election was controlled by the United States troops, thus securing Bramlette's election. In 1864 he attended the Chicago Convention that nominated General McClellan for the presidency, and this substantially closed his political career.

During most of his life Governor Wickliffe actively engaged in the practice of the law, realizing large pecuniary profit and extensive reputation. He was connected with many celebrated cases. DeParcq vs. Rice may be mentioned. He practiced law in the same region with Mr. Hardin, and was often his colleague, but most usually retained for the opposite side. By some he was regarded as Mr. Hardin's most formidable rival at the bar. Collins records that in February, 1869, he made a speech in the Court of Appeals two hours in duration, which, in view of his age and infirmity, surprised his friends by its ability. He had practiced law fifty eight years, and spoke of it as probably his last public speech, and so it proved.* He died at the residence of his son-in-law, in Howard county, Maryland, October 31, 1869.

About the commencement of the civil war he was crippled by an accident, compelling the use of crutches the remainder of his life. He presided at the Douglass Democratic State Convention in Louisville, January 8, 1861. The author saw him the first and only time on that occasion. He was a magnificent specimen of manhood in old age. A large man, with massive head, and heavy brows, which, like his hair, were white as snow, and, withal, a presence of imposing dignity. Several years before his death he became blind.

*Collins' History of Kentucky, Vol. I., page 194.

He was a life-long member of the Presbyterian church. As a commissioner of the Presbytery of Louisville, he attended the celebrated General Assembly in St. Louis, in 1866, that resulted in the division of the church. He, with others, was expelled for signing the famous "Declaration and Testimony."

Governor Wickliffe's long, varied, and successful career shows him to have been no ordinary man. Always a Whig, until the commencement of the civil war, his vote for Jackson, his service in Tyler's cabinet, and his natural conservatism, often subjected him to the charge, by his own party, of being a "trimmer." No petty pride of being called "consistent" restrained him from the path of duty in every emergency. He opposed a constitutional convention in 1838, when the country was quietly prospering under the existing constitution. When, in 1849, increase of population, the unwise exercise of the appointing power, the sale of offices, and other causes, rendered constitutional reform necessary, he was its advocate. In 1850, a political adversary (Thomas F. Marshall *), who felt no kindness for him, thus wrote: "We know Charles A. Wickliffe well, and place a high estimate on his talents. We have heard him speak, often with great interest and advantage to ourselves. We have considered him a clear, but cool-headed, man, without enthusiasm or that inner fire that warms men into poetry or eloquence. Judgment, uninfluenced by passion or warm affection of any kind, has been the great faculty we have ascribed to him." Mr. Hardin regarded a lack of feeling the blemish of Mr. Wickliffe's oratory. Referring to a speech of the latter, Hardin observed: "I have yet to learn that a powder magazine can be exploded by throwing snow-balls at it." A kindlier critic once said: "Unlike many of our greatest statesmen, his private life is a model for imitation, unstained as it has ever been, by moral pollution of any kind, and marked by a truthfulness and sincerity resulting from religious reverence. Mr. Wickliffe's eminent characteristics have ever been fast fidelity to his friends and a tenderness which rendered his presence agreeable and cheering in every domestic relation. He dignified every position he occupied and adorned every sphere in which he moved." †

He differed from his kinsman (the subject of this work) in lack of the power of ridicule and faculty of wit. Also, differing in a personal characteristic, he deemed it worth his thought to observe a courtliness in dress as well as in manner. He had less insight of human nature

* In Old Guard, page 15.

† Sixty Years in a School Room, by Mrs. J. A. Tevis, page 349.

and less understood the motives that actuated mankind. They had, however, a common attribute which marked them out from the mass of men, and that was, when convinced of the correctness of a principle or the rectitude of a line of action, they irrevocably committed themselves to it regardless of all opposition or loss. At the Democratic National Convention, at Chicago, August, 1864, pending the late war, and when Kentuckians were regarded with distrust by the Government and the North, Governor Wickliffe, in the course of a speech, said:

"Many of the best and most loyal citizens of Kentucky, among them twenty or thirty ladies, are now imprisoned by the military authorities in Louisville, in damp and dirty cells, with only straw to lie upon, and the coarsest fare; and the newspapers of Louisville are forbidden to make the slightest allusion to this terrible state of affairs. I proclaim it here and now, at the risk of my liberty, perhaps of my life."

His courage was as unflinching as his honor was exalted and his integrity inflexible. His life and character were nobly rounded. In early life he married Miss Crepps, the daughter of a pioneer hero. Five daughters and three sons were the fruit of this auspicious union. One of the daughters married Hon. Joseph Holt, of Washington City. Another married United States Senator Yulee, of Florida; another Judge Merrick, of Maryland. The youngest married Captain W. N. Beckham, late of Bardstown, who died while a member of the State Legislature, a few years ago. Of his sons, Hon. J. Crepps Wickliffe has filled many posts of honor, and is now United States District Attorney for Kentucky; Robert has been Congressman from Louisiana, and Charles, after serving with credit in the Mexican war, lost his life some years afterward by a fall from a horse.*

*See Appendix, Note C.

CHAPTER XVIII.

KING JACKSON SUBDUES HIS ENEMY.

IN the spring of 1833 Mr. Hardin resigned his seat in the State Senate, at the time entertaining other aspirations. Charles A. Wickliffe had succeeded Mr. Hardin as representative in Congress from the Bardstown district in 1823, and so continued for ten consecutive years. During that period he had won for himself a distinguished position in national politics. But he now declined re-election, and Mr. Hardin announced himself a candidate.

Political feeling has rarely run higher than at this period. President Jackson was vindictive toward his political enemies, on the one hand, and, on the other, warmly devoted to his friends. His friends were equally unqualified in their loyalty to him. The opposition called it "man worship." Many of the measures of the administration not only struck down its opponents, but really filled them with apprehension for the peace and safety of the country. The opposition in Congress believed that in resisting these measures with all its energies it served the cause of constitutional liberty. The opportunity for engaging in such a contest was not a little alluring to one of Mr. Hardin's temperament.

As Nelson county had been for over twenty successive years honored by having one of its citizens in Congress, this fact not unnaturally bred jealousy among aspirants in other counties. Dr. Christopher A. Rudd, of Washington, became Mr. Hardin's competitor, and a formidable one he promised to be. He was a large man physically, of fine presence, and a fluent and graceful speaker, possessing a pleasing voice. Great social qualities made him popular with the masses. He was convivial to an excess, unfortunately imperiling his personal health and welfare. He had an exhaustless fund of anecdote, which he related with charming effect. To cap the climax of political graces (for few were more potential in that day), he was a skillful performer on the fiddle.

The canvass was prosecuted by both aspirants with vigor, and soon became warm and exciting. Both were of the same political school, and the issues between them were consequently of a personal and

local character, not the least important of which was the claim that Nelson county had monopolized the honors of the district.

"Kit" Rudd, as he was familiarly called, was a great favorite in Washington, a large county, then embracing the territory out of which Marion was subsequently created. He had an extensive relationship throughout the congressional district, and experience has shown that "blood will tell" under such circumstances. On the other hand, the district embraced the same territory in which Mr. Hardin constantly practiced his profession, and so he had the advantage of superior acquaintance. As a debater he overshadowed his competitor. When he felt effort to be necessary he was untiring and ready and fertile in resources. The public recognized his intellectual superiority over his genial riva'. For a short while Dr. Burr Harrison, of Bardstown, a politician distinguished in his day throughout the State, was also a candidate, but he withdrew before the election, leaving the contest between Rudd and Hardin.

In 1830 George D. Prentice came from Connecticut to Kentucky for the purpose of writing the "Life of Henry Clay." This enterprise completed, he, under the auspices of Mr. Clay or his friends, established the *Journal*, a newspaper at Louisville, which, from the beginning, assumed to be the leading organ of the National Republican party in that State, of which Mr. Clay was undisputed leader. In 1832 a weekly newspaper, the *Focus*, established in 1826, was merged into the *Journal*, thereafter styled the *Journal and Focus*. That the *Journal and Focus* favored Mr. Hardin's election is fairly inferable from the following extract which was published just a few days before the election:

"We may avail ourselves of this opportunity to say that we have been more than once requested by gentlemen to whose wishes we always pay the utmost deference to express an opinion as to the comparative claims of Messrs. Hardin and Rudd upon the support of the National Republicans of the Seventh district, but we can not, under existing circumstances, comply with the suggestion. The freemen of Washington, Nelson, Spencer, and Bullitt are far better acquainted than ourselves with the two candidates before them, and consequently better qualified to judge of their respective merits or demerits. We presume that the first and leading object of our friends will be to elect a representative who will give an unequivocal and energetic support to the measures of his party; and if both candidates are alike trustworthy in this respect, the choice will unquestionably fall upon him who is best able to bear aloft the proud standard of National Republicanism where strong men meet in fierce encounter."

In the same issue are published extracts of a circular address of Mr. Hardin to his constituents.

"Like everything emanating from that distinguished man," said the editor, "it is sound in its principles and strong and lucid in its reasonings. The author's remarks upon the United States Bank and the Land Bill we give below, confident that they will be read advantageously in all parts of the State as well as in the section for which they were intended."

The proposition to re-charter the United States Bank and distribute the proceeds of the public lands, it may be observed, were leading issues dividing political parties of that day.

"I am in favor of re-chartering the Bank of the United States," proceeds Mr. Hardin. "I would not be opposed to any reasonable modification of its charter; and if it could not be re-chartered, then I would vote for a new bank. The situation of our country requires that the old bank should be re-chartered, if possible, because a new one can not be made until the charter of the present bank expires; and when that occurs, and the present bank winds up, the pressure upon the people for the want of money will be great beyond anything this country has ever known, and the sacrifices of property will be alarming before a new bank can be chartered and relieve them. It is objected that foreigners own stock in the present bank. They have no part in the management of the bank, and they were not original subscribers of stock, but have purchased at second hand. Make a new bank, and I would then ask, how are foreigners to be prevented from buying stock from our own citizens who may own it? An American citizen is a free man, and claims the right as such of selling his property to any purchaser who will give him the best price, whether he is naturalized or not. But I will inquire of the farmers, who are nineteen parts out of twenty in this district, is it not for your interest to get for your produce and stock good money and a good price? How are you concerned in the question from what quarter of the world does the money come? We have no mines in America. All our money must come from other countries, and whether it is from Mexico, Peru, Spain, Portugal, France, or Great Britain, it belongs to politicians more sagacious than I am to perceive it at all material to your interests. All banks are considered by some an evil; but if that be the fact, a bank whose paper is at par all over America is a much less evil than those little State and independent banks whose paper is ever below par. We must either have a Bank of the United States or be overwhelmed by the depreciated paper of the banks of our own and sister States. Who among us will not admit the times now to be better in our moneyed transactions than in the days of independent banks?

"There is yet another question of great importance, which will come before Congress at the next session, that is, what shall be done with the pub-

lic lands? The national debt is now paid off; the revenue arising from the tariff meets every expense of the Government. Two propositions are now submitted to the American people: the new States claim the public lands within their limits, and the President recommends the adoption of such a measure; the old States claim their portion according to federal numbers. The quantity of public lands can not be less than six hundred millions of acres, worth, according to an estimate, three hundred million dollars. Kentucky's portion would be about fifteen million dollars. This money would be distributed each year as the sales were made, the amount distributed to Kentucky annually would be at least one hundred and fifty thousand dollars, which money, if the Legislature choose to apply it to defray the ordinary expenses of government, would relieve the people from taxation; but, on the other hand, if the money should be applied to internal improvements, one hundred and fifty thousand dollars a year would make first-rate turnpike roads in Kentucky upon all the leading routes, and when made out of the public money they could be made free of tolls; or, rather, if the wisdom of the Legislature should think it advisable to establish free schools, it would aid greatly to accomplish that object. In whatever way the Legislature might expend the money, it would circulate among us for our labor and provisions. The new States have had given to them by Congress already ten per cent. out of the sales of public lands within their limits for roads, canals, and schools, and when they get their proportion according to population, over and above that, justice has then been dealt out with a liberal hand to them. In the investigation of the question of what ought to be done with the public lands, the inquiry presents itself, how did the United States come by those lands? All the right, title, and claim of Great Britain to them was ceded to the United States by the definitive treaty of 1783. The price paid was the blood shed and the money expended during the Revolution.

"Virginia, New York, and Connecticut ceded their lands to the United States; our Government purchased Louisiana of France, and gave $15,000,000 for it; also Florida of Spain, and paid her $5,000,000. The public lands in Mississippi and Alabama were purchased of Georgia at the price of $1,250,000; and the United States gave the Yazoo Company $5,000,000 for their claim to the same lands—making $26,250,000 paid in money, besides the numerous sums paid to extinguish the Indian title to the same lands. In addition to all this, the bloody wars waged with the Indian tribes for this land, with all the expenses attending the same. Kentucky has contributed her portion of all the money paid, and as to the blood shed in the Indian wars since 1783, she has spilled more than all the other States put together. Her claims can not be resisted, and her people ought never to surrender them. It is the only chance Kentucky will ever have to get any part of the public money, while the other States have, heretofore, had it expended within their limits by millions."

The election resulted in Mr. Hardin's favor. He carried all the counties of the district except Washington, yet so large was Dr. Rudd's majority in that single county that it came near overcoming the thousand and more majority received in the other counties. Although it was his native county, it voted against him in every race he made. One day, while the result was still uncertain, a crowd waited on the square at Bardstown for the coming of the mail coach with news. The tidings from Springfield were discouraging for Hardin and his friends. A man named Bean, who was present—a supporter of Rudd—jeeringly said to Mr. Hardin: "Old Red Fox, we have got you at last." "Washington county is too d——d large," replied Mr. Hardin, "and must be divided." In a year or so afterward division did occur, and Marion county was the product.

The first session of the Twenty-third Congress began December 2, 1833. Andrew Stevenson, of Virginia, who had often been a member, who was subsequently minister to St. James, and who had been elected speaker the three preceding terms, was again chosen presiding officer by a large vote. Kentucky was entitled to thirteen members by the last preceding apportionment. That delegation was prompt in attendance at the opening of the session. Besides Mr. Hardin were Chilton Allan, Thomas A. Marshall, Amos Davis, Richard M. Johnson, Thomas Chilton, Chittenden Lyon, Martin Beatty, James Love, Christopher Tompkins, Patrick H. Pope, and Albert G. Hawes. The right to represent the Fifth district was claimed by two, Robert P. Letcher and Thomas P. Moore—the latter holding the certificate of election.

Chilton Allan was a Virginian by birth, a lawyer by profession; had had long experience in the State Legislature, and this session entered on his second congressional term. He had large capacity for affairs and was both patriotic and honest.

The present was Judge Marshall's second term. This generation has not forgotten this amiable and learned jurist, who so long adorned the Appellate bench of the State.

Mr. Davis entered Congress the first time the present session. He had represented Montgomery county in the State Legislature and had previously made several unsuccessful races for Congress.

Richard M. Johnson, or Colonel "Dick" Johnson, as commonly called, is one of the familiar names in Kentucky history. His fame as a soldier in western wars, and his service in the State Legislature, as well as in both Houses of the national Congress, and also as Vice-

President of the United States, conspire to make him one of the most conspicuous figures of his time. Colonel Johnson headed the committee on military affairs.

Thomas Chilton—lawyer, preacher, and politician, was of unique talents. Practicing law at Elizabethtown, he was often associated with Mr. Hardin. Mr. Allen, in his "History of Kentucky," says: "At the bar and on the stump, Mr. Chilton, as a speaker, was interesting and of an agreeable style; in the pulpit, however, his manner was changed. There he spoke with the sing-song peculiar to the sect to which he belonged" ("Separate Baptists"). This was his third term.

Chittenden Lyon was the son of the celebrated Matthew Lyon. He had been continuously in Congress from 1827.

Mr. Beatty had served in the State Legislature, and, for the first time, entered Congress the present session.

James Love was a native of Nelson county, and educated at Bardstown. He had studied law and settled at Barboursville. From that district he was chosen to the Twenty-third Congress. He ended his career in Texas, whither he had removed.

Judge Tompkins had served as circuit judge, had been an unsuccessful candidate for governor against Governor Desha, and entered Congress in 1831. He was one of the able men of the delegation.

Patrick H. Pope, of Louisville, was a lawyer and a man of culture. He had the distinction of being the youngest member of the delegation, being only twenty-seven years of age.

Albert G. Hawes was a native of Virginia, but belonged to a family well known in Kentucky. He was a genial man, of popular manners, and had proved himself an efficient member of the preceding Congress. He and Colonel Johnson were the only Kentucky members honored with chairmanships; the former had charge of the post-office department.

Governor Letcher and Mr. Moore had each served several terms in Congress as colleagues, but, by change of apportionment, fell in the same district, and were now contesting competitors. Letcher was of the Whig, Moore of the administration, party. Their contest was a matter of extensive debate. Mr. Hardin, as well as the entire Kentucky delegation, participated in the discussion. Possibly, as Letcher and his friends insinuated, partisanship, rather than its merits, decided the contest. Anyway, the House determined that neither was entitled to the seat, and a new election was ordered, which resulted in Letcher's favor.

The present Congress contained not a few whose names were already well known or afterward became familiar to the public. Among these the following are mentioned: Franklin Pierce, of New Hampshire; Rufus Choate, John Quincy Adams, and Edward Everett, of Massachusetts; C. C. Cambreleng and Millard Fillmore, of New York; John Y. Mason and Henry A. Wise, of Virginia; George McDuffie, of South Carolina; John Bell, Cave Johnson, James K. Polk, and David Crockett, of Tennessee, and Thomas Corwin, of Ohio. "The Twenty-third Congress," says Mr. Parton, "from the extraordinary number of its members who have filled important stations, has been styled the 'Star Congress.' Five of them have been president, five vice-president, eight secretary of State, and twenty-five governor of a State." *

Mr. Hardin served as a subaltern on an important committee—"the Judiciary"—of which John Bell was chairman.

"The committees were so organized," said Mr. Hardin, "that although they (the Whigs) stood to their opponents about in the proportion of one hundred and twelve out of two hundred and forty they had in the committees seldom more than two out of nine; in some cases three, and in some cases only one. He would not pretend to conjecture the reasons which had governed the presiding officer in such an arrangement. He presumed it must be owing to their incompetency for public business. Certainly the fact was a strange one on any other supposition. And if that was the ground on which it had happened, he trusted their talents would burst forth on the nation in such a blaze that this state of things could not again occur."

At an early day of the session Mr. Hardin made a speech on the Letcher-Moore contest, advocating the claims of the former, and took an active part in the debate whenever the question came before the House. Mr. Chilton introduced a resolution looking to granting pensions to those who had served in Indian wars in the West, which received Mr. Hardin's earnest support, and was adopted by the House. In opposition to appropriations he frequently spoke, but of this more will be said hereafter. The chief topic of the session was the removal of the Government deposits from the United States Bank. This bank had been established in 1816, the last year of Mr. Madison's administration, and had one or more branches in every State in the Union. It was a bank of issue and deposit, and having been chosen as the depository of the public moneys of the United States, its working capital was immense and its prosperity in keeping. Its charter was for twenty years, and as the period of its expiration approached

* Life of Andrew Jackson, Vol. III.

its friends began efforts for its re-charter. Unluckily the officers and directors of the bank failed to support General Jackson for the presidency, and thus excited his hostility. In 1833 the President announced that he had discovered that the bank used its money and power to influence the election of public officers. In that exigency "the path of duty," said he, "which the executive department ought to pursue was not doubtful." He accordingly requested his secretary of treasury, Mr. Duane, to remove the public moneys from the United States Bank and deposit them in State banks. Declining to obey this request, Duane was removed and Roger B. Taney (afterward chief-justice) installed in his place. Mr. Taney, more obedient than Mr. Duane, did as he was bid, and great was the agitation that ensued. When Congress met, one of the earliest questions was concerning the removal of the deposits, parties being divided between those who approved and those who disapproved the removal. Aside from the results of the removal upon the trade and commerce of the country, the arguments for and against were much at equipoise. But undoubtedly the effect of the withdrawal of such an immense sum from its business operations more or less embarrassed the bank. It measurably diminished its loans and required settlement by its customers. The President and his friends insisted that the bank was responsible in part for the public distress, and that it conducted its business so as to excite public discontent, which it untruly charged to the account of the removal of the deposits. Mr. Hardin was among those who espoused the cause of the bank. The longest speech he made during the first session of the Twenty-third Congress was in relation to the removal of the deposits, occupying part of two days in its delivery. Some extracts from that speech will be given.

It had been charged that the union of the National Republican party (of which Clay was leader) and the State's Rights party (the followers of Calhoun) in favor of the bank was the result of a corrupt coalition. In refutation of this charge Mr. Hardin spoke at some length, closing thus:

"What positions ought these two great parties to occupy on the present occasion? Each is friendly to civil liberty, as secured by the Constitution of the United States and the Constitutions of the several States. They differ as to points of doctrine in the construction and exposition of those instruments; but, in the great cardinal points of equality, liberty, and freedom, they unite most cordially, and differ only as to the mode of obtaining them. Both parties are equally enemies to all arbitrary governments, despots, and

tyrants, whether he should be called king, like William IV., or President, like Andrew Jackson. Shall Christians differ about immersion and sprinkling when the enemy of their faith is in the field, and such difference might endanger the existence of their entire religion? Did our forefathers and teutonic ancestors, under Charles Martel, when they met the Mahomedans on the plains of France, and fought for the existence of Christianity, act thus? No. They united and fought like heroes, and as became Christians on such a momentous and awful occasion; and left the fate of the battle to God, who gave them a splendid and glorious victory."

Mr. Hardin had, as a member of Congress in 1816, opposed the charter of the bank on constitutional grounds. He and Mr. Clay had engaged in a debate on the subject at that time in which some unpleasant feeling was developed. As the advocate of the bank on the present occasion it became proper that he should explain his change of views. This he did as follows:

"I had the honor to have a seat in this House when the present bank was chartered. I was then one of the youngest men in the House, and equally young as a politician. I voted against the bank bill. One reason was, I was then inclined to the opinion that Congress had not the power, by the Constitution, to charter a bank; since which time I have thought much on the subject, and my reflections have resulted in the conviction of my error on that point, and a settled and firm belief that Congress has the power. The operations of the bank since that time, as it relates to the finances of the nation and the management of its fiscal affairs, have conduced much to the change of my opinion. Whenever I discover that my opinions upon any subject are erroneous, I renounce them with pleasure. I am anxious to arrive at truth. If some other men in high places had less perverseness and obstinacy in adhering to their opinions, and shutting out lights that are cast on the subject, entertaining the ridiculous idea that it is a mark of weakness to give up an erroneous opinion, instead of its being a display of magnanimity, we would have the deposits returned, the bank rechartered, peace, plenty, happiness, and prosperity restored to this distressed, embarrassed, and ruined country. Instead of thousands being thrown out of business, and compelled to beg their bread, with starvation staring them in the face, we would see the prices and productions of labor increased, commerce, manufactures, and agriculture resume their wonted activity, and the cheering hum and bustle of industry would be again heard all over the land.

"In my opposition to the bank I had another reason. I believed the capital was too large; I knew that money was power; and that, owing to the interest which the United States had in that bank and the patronage the executive controlled in its management, it was possible that it might be con-

verted into a great political engine and co-operate with the executive of the government; and, whenever it did, it would then, in matter of fact, be the union of the purse and sword of the nation in the same hands, and thereby endanger the liberties of the people. My fearful anticipations have not been realized. The officers of the bank were caressed and courted; but when they refused, they were then threatened and menaced; which threats and menaces they defied. They would not become partisan tools in the hands of the executive, or, more properly speaking, the kitchen cabinet. Denunciations then followed, and all the train of misfortunes which, with the besom of destruction, have swept over this land, have been the consequence. I deem the bank the main check to executive usurpation and universal domination; and now I am propelled, by love of civil liberty, to be for the bank. Mr. Speaker, this explanation, as I remarked before, I owe to myself. Some of the members of the House know the editor of the *Globe;* he occasionally glides around this hall, and looks like the ghost of famine. I have known him from his youth.* Although some dislike him, I am much attached to him; and, good humoredly, the other day, he threatened me if I made a speech he would publish my speech of 1816, which, if done, would place me in an awkward situation, without the explanation which I have given. This is the apology I make for the present digression. It is not agreeable to me; it is unpleasant for a man to speak of himself."

Replying to the charge of the President and his friends that the bank had interfered in public elections, Mr. Hardin observed:

"Another charge alleged against the bank is that it entered the political arena in the presidential election, and opposed the re-election of General Jackson. By this charge against the bank, I suppose the directors and other officers are intended and pointed at I will ask, Mr. Speaker, does any man in this country lose or forfeit his right of suffrage by following an honest calling for a support? Surely not; because a man is an officer in the bank of the United States, has he no civil, political, and religious rights? Are they impaired, abridged, or taken from him? or is he compelled to exercise them only in a particular way? This charge is a vital stab at the great republican doctrine of free suffrage. It has been attacked by this administration all over America; and men in office have been made to feel it everywhere; and from the conduct of General Jackson in relation to turning men out of office for opinion's sake; when that opinion was against him, I have no doubt that the whole and sole cause of offending in the bank and its officers is, that they would not prostitute the power of the bank to perpetuate his political power, and they themselves, individually, were opposed to his re-election. Had the bank and its officers subserved his purposes, we should have heard nothing of its being a 'monster;' it would then have been a necessary, valuable, and constitutional institution."

* Francis P. Blair.

The most entertaining part of the speech is, undoubtedly, that in which he deals with General Jackson and his administration. The President in justifying his measures, in a communication to his cabinet, had said they were necessary to preserve from contamination the morality and religion of the country.

"The States," said Mr. Hardin, "by their municipal regulations, will take care of the morals of the people. All the President can do on that subject is to set a good example in his public and private conduct. As to religion, it belongs, of right, to our God; and He who took care of it and preserved it in the days of Tiberius, Caligula, and Nero, can and will take care of it in the days of Andrew Jackson."

Mr. Hardin concludes his lengthy speech by a caustic review of General Jackson's military and civil career:

"Much has been said on this floor in praise of General Jackson; his having fought through two wars, the Revolution and the late war; of his wounds and scars received in battle; of the glorious and splendid victory achieved at New Orleans. A great part of this kind of argument was not intended for this House, but the White House, the palace. There the appropriate rewards await such services, and will in due time be distributed as a part of 'the spoils of victory.' Gentlemen know full well what kind of change will pass current there, and put a ticket in the great lottery where the prizes of favors and offices are to be drawn. I, however, must be indulged in one remark, that the victory of New Orleans ought now to be considered as public property, for well the nation has paid for it. The rewards, honors, and emoluments profusely showered down on General Jackson since that time entitle them to it; and when we add to that the misrule the people have endured and suffered for the last five years, surely none will question the propriety of considering that victory now national property. Yet, at the same time, such rewards for a victory, however splendid, argue little for the military character of the nation. It seems to imply that the nation never achieved the like of it before, and never expects to equal it again. Such an opinion is a libel on the glorious achievements of the Revolution, and is a poor compliment on the warlike spirit of the nation, to be displayed hereafter in its proud march to future greatness. The truth is, that victory is the common change of all applicants for office, and they can not praise their change too much, either as to quality or quantity. The more they will puff it, the more will they get for it. That is the reason why the battle behind a ditch and cotton bags has been so much exalted and extolled over the victories of the Revolution and the master-generalship displayed by Washington in concentrating the military forces before Yorktown and the capture of Lord Cornwallis, or the hard and well-fought bloody battles on the Niagara frontier in the last war.

"But, Mr. Speaker, admit all the encomiums that have been heaped upon General Jackson by his friends to be true; the higher his military fame, the greater his popularity, the stronger his hold upon the affections of the people, the greater the necessity to watch with vigilance and jealousy every step he takes toward arbitrary power. From the weak and impotent man, who is ambitious, we have nothing to fear. The anger of the cat excites no alarm; the fury of the uncaged lion is terrible.

"We have heard a great deal said in this House about our foreign relations; what advantageous treaties have been concluded with other powers; and how, since the presidency of General Jackson, the name of the United States is dreaded abroad. It is not necessary to enter into a discussion, at this time, upon the advantages or disadvantages of the treaties concluded during the present administration, or how much General Jackson's name, fame, and authority make the United States dreaded abroad. I consider the whole of them empty boasting. But suppose the pompous accounts are all true, what do they prove in the present controversy? I answer, nothing.

"When was the Roman republic ever so formidable in her wars with foreign nations, or more dreaded by them, than in the days of Julius Cæsar, when civil war and discord raged within the republic, and finally ended in the downfall of the government, and the elevation of Cæsar to the dictatorship? When was England, anterior to the days of Cromwell, ever so powerful as when that tyrant led her armies to victory and Blake commanded her fleets on the ocean? All the surrounding nations trembled at his name. What was the state of the internal government of England at that time? The republic was overthrown, the members of Parliament turned out of their hall by their own general, and he proclaimed protector of the nation.

"Let us turn our eyes to France within our own times. Bonaparte was the victorious general of that republic. He was like unto Absalom of old; he had stolen away the hearts of the people. He turned his arms against the government he had fought for; drove, at the point of the bayonet, the representatives of the people out of the hall of their deliberations; prostrated the republic; and, under the names of 'First Consul,' and then 'Emperor,' became the tyrant of the people. He conquered Europe in a hundred dreadful battles. All nations feared him, and to foreign powers he dictated whatever treaties he pleased. The foreign relations of France, as it respected the extension of her empire or her influence at foreign courts, were well managed. But that was a poor equivalent for the loss of liberty, for the cruel conscriptions which tore the youths of France from their fathers, mothers, and country, and bleached every field in Germany with their bones, and dyed every river with their blood. But God made an awful example of him at last; reverses overtook him in his mad career of conquest; misfortunes befell him, and his Maker, to let the world behold in him the instability of fortune and the ruin which awaits insatiable ambition, fixed

him on an island in the South Atlantic, perched on the crater of an extinguished volcano, a fit emblem of his own fallen greatness and gloomy fortunes. Sir, war abroad is sometimes necessary to a man when he wants to become the tyrant of the people. At all events, being dreaded and feared by other nations is no evidence that he is the father of the people and respecter of their rights and liberties.

"He was to reform and cut down all useless offices. Instead of doing that, he has multiplied offices, agencies, and employments by the hundreds. The enormous expenditure of public money and an increase of officers are necessary to his plan of conducting the government. It increases the spoils of victory. In the increase of offices and expenditures additional power is given; it enlists more men under his standard. He and his friends abused his predecessor because one or two publishers of the law were changed. What has he done? His conduct has destroyed the liberty of the press altogether, not by pains and penalties and the establishment of a censorship over it, but by corrupting it with patronage, largesses, and bribes. There is one way certain to high lucrative offices and employments; that is, to get up a press to praise and laud General Jackson. The editors know this, and, notwithstanding their boasted patriotism and devotion to their country, their incorruptibility of heart, yet, when taken up to the top of this capitol and shown the good things of this land, and have them all promised to them, the flesh is weak; their supposed inflexibility of character yields, and they can not say, as Duane did, 'Get behind me, Satan.' When such sterling integrity as Amos Kendall once had gives away, who can expect to have the firmness to resist?

"Mr. Adams, when he administered the government, was abused because he appointed members of Congress to the highest offices within the gift of the nation. Without inquiring whether this charge was true or not, what has been the conduct of the present administration? The whole cabinet and diplomatic corps were composed of members of Congress. This is a most exceptionable practice. It is by patronage, and not by money, that the ministry in Great Britain, since the days of Walpole to this time, have corrupted and bought up the Parliament. I will not say that Congress has been purchased in that way, but I will say that it is a dangerous practice to the liberties of the people. It gives the President great power. It has been a belief of the existence of this power, I fear, which has kept unfilled the foreign missions to Great Britain and Russia.

"General Jackson and his administration have attacked the free exercise of the right of suffrage. This has been done by punishing men for maintaining and enjoying the right to vote at elections as they pleased. The punishment inflicted was to turn them out of office, if they were in office; if not in, to shut the door to office to all favor and promotion. But it has been more effectually done by giving offices, honors, promotions, and rich rewards to

those who vote for him and support his administration. The man who is most abject and servile in his flatteries succeeds best. The vile sycophant is preferred to the honest and honorable man; high-minded men withdraw into retirement, impressed with the solemn truth, that

> "'When vice prevails, and impious men bear sway,
> The post of honor is the private station.'

"This practice of letting men know, when they come to the polls, that they vote under the fear of punishment on the one hand, and the hope of reward on the other, will undermine this government, shake it to its center, and finally prostrate it on the earth. It must be stopped, or we are an undone people. To come to the polls, like horse jockeys into a race-field, and inquire into the characters, keepers, and managers of the candidates before we vote, and then to vote for the one that is most likely to win the race, is a deplorable state of things.

"Mr. Speaker, when we look at the present, and then review the past, and put them together, what is the prospect before us? A proud, haughty, ambitious military man, who has charmed the imaginations of the people by the brilliancy of his victories, and won their affections by their admiration of his renown in arms, has, by their misplaced affection, been elevated to the first office of this Government, to the head of affairs. What has been his conduct in this high office? Let facts speak, and not myself. They speak louder than words in this hall. They speak to the understanding and hearts of the people.

"He has increased the expenditures of this Government to an enormous sum which was unknown to former times. He has multiplied offices, employments, and agencies, to get his friends quartered on Government, in a manner unheard of before. He has invaded the liberty of the press, by bribing its conductors with lucrative offices and rich rewards. He has stabbed the free exercise of the right of suffrage to the heart, by punishing men for exercising it, and by rewarding others for prostituting it. He has invaded the independence of this House and the Senate chamber by coming into them to select all the high officers of the Government. He has attacked the reputation of the judiciary, and endeavored to injure their standing with the people, by imputing to them corruption. He has abused and attempted to degrade a portion of this House and the Senate, by charging them with having been bought up and 'fee'd' by the bank. He has seized the purse and sword of the nation, and arrogantly claims to be 'the Government itself.' He has, following the example set by usurpers of former days, endeavored to make the people believe that the other two departments of the Government are inimical to their interest and welfare, and that he alone is their friend. He has engrossed all power, and is as absolute as any crowned head in Europe. He only differs with them in the name.

"Let us see the means he has adopted to perpetuate his power and rivet our chains of slavery. All the officers of this government are a disciplined corps, with but few exceptions. The post-office department, including postmasters, clerks, mail contractors, and their dependents, furnishes thirty thousand. The other departments supply about an equal number, making something like sixty thousand, scattered all over the United States, receiving and disbursing twenty-five millions of dollars a year. What an appalling phalanx this is for the people to encounter! how dangerous to liberty! And if he can only add to this powerful body the whole of the additional forces which the pet banks bring to his aid when united, this army of dependents and retainers will be resistless. He has chosen his successor—the last act of royalty. He has shown the young Cæsar to the Praetorian guards at the seat of government, and last fall made the tour of the North with him to show him the distant legions. All the office-holders and office-hunters already begin to acknowledge his power, and recognize his right divine to the succession. They are making daily efforts to get the rays of his countenance to beam upon them; but, as yet, through affected humility, he keeps his eyes on the ground, and will look no man in the face.*

"What a dreary prospect we have now before us! How desperate appears the cause of the people and of liberty! The mariner, when lost in the wide and almost boundless Pacific, tossed by storms and driven by adverse currents, his water and provisions nearly exhausted, now and then is cheered with a green island rearing its head out of the waste of waters. So with the lost and wayworn traveler over the great desert of Sahara; nothing but a wide and almost illimitable ocean of sand around him; from above, the sun parching his head, the sand blistering his feet beneath; he, in this gloomy situation, occasionally meets with a well of water and a grove of refreshing trees, which has escaped the baneful and withering sirocco, to gladden his heart. But what, Mr. Speaker, have we before us in this wide waste, ruin, and desolation of all our rights, civil, political, and religious? I answer, nothing but hope and the justice of our cause are left to us. Hope, almost alone, sustained Washington frequently in the revolutionary war; and why should we, as yet, despair? No; let us not give up the ship; relief is coming. The people are breaking the chains that kept them spellbound. They are awakening everywhere. New York has manifested a disposition to be free. Virginia has erected the standard of liberty, and not only her own sons, but the nation, will rally around it. Kentucky will know the banner—it was once her own—and, in this great contest, will be found combating by the side of her parent. The Senate is with us. The greatest men in the nation are there. Let us make one mighty effort, and burst asunder, as the strong man of old did, the cords that bind us.

"I have, sir, been speaking of General Jackson and his administration politically, and considered what has been done during his administration as

* Mr. Van Buren is alluded to.

done by himself; for the effect upon the nation is the same. It is due to that distinguished individual, although his official conduct is ruining our country and prostrating its best and dearest interests, to say, before I resume my seat, that I believe he is an honest and truthful man, and will not stoop to disguise his actions, however arbitrary and despotic they may be. His greatest fault is the strength and violence of his passions, which, instead of checking, he cherishes, feeds, and blows into a flame. He has a laudable love of glory, but he loves it to excess; and hence he mistakes the selfish voice of flattery for the unbought sound of the trumpet of fame. He courts the applause of the world and posterity. Alas! his ears hear nothing but the servile adulations and praise of the vile miscreants who surround him. He, from his habits as a general of our armies, has been taught to command, and is impatient of control; the wretches who fatten upon the spoils of the nation avail themselves of his former education to keep the honest, honorable, and high-minded men, who rallied around him originally, from having any influence over him; nay, nearly the whole of them are excluded from his presence, and proscribed by the cabal that influence his conduct and direct his actions. But behold and see his most powerful friends when he came into power. Who are they? Calhoun, McDuffie, and Hamilton, in the South, and in the West, Bibb, Wickliffe, Chilton, Rowan, and Daniel. And where are they now? In the ranks of his opponents. How has this been done? Because a 'malign influence' has driven him from his course, and made him depart from his principles. They went in for principle, and not for men.

"I have one more remark, Mr. Speaker, and then I have done: I once heard a good and pious man, who had long ministered at the altar of God, say, in finishing a sermon, that if he had made one convert, nay, brought one man who heard him to seriously think upon the great truths he had been delivering, he would consider himself amply rewarded for all his labor and all his toils on that day, because such was his conviction of the great truths of Christianity and the true religion of God, that a seeker would soon become a convert; so with myself, comparing small things with great, the matters of this world with the things to come hereafter; if I have made one convert, nay, brought one man to think seriously upon the political truths I have attempted to deliver, I shall feel amply compensated for all my labor. But, Mr. Speaker, whatever may be the result, I thank my God for this opportunity and health sufficient (although lately greatly afflicted) to do my duty to my constituents and country; and into the hands and safe-keeping of the Almighty, as far as I am concerned, do I commit the cause and destinies of the American people."

The President was unshaken and undismayed by all denunciations and all clamor. The efforts of the bank and its friends, or as Mr. Benton had it "the unhallowed combination between the moneyed

and a political power," to recover from the blow of the removal of the despots was in vain. "King" Jackson (as Hardin called him on the "stump") had dealt his enemy a mortal blow for which there was, as it proved, no remedy in political pharmacy.

On May 16, 1834, Mr. Boon, of Indiana, called up a resolution previously offered by him fixing June 16th as the day for adjournment. Mr. Hardin moved to strike out and insert "July 2d," and said that "he presumed the honorable member was not more solicitous than he to return to the bosom of his family, his business, both professional and private, calling upon him (Mr. Hardin) as urgently and as imperiously as did that of any other honorable member." After giving in detail various reasons why adjournment should not occur at so early a day as proposed, he closed by saying "he hoped he would get credit for the assertion that his anxiety to return to his home was as great as that of any man, feeling with Cowper, in the beautiful lines he attributes to Selkirk—

> "'When I think of my own native land,
> In a moment I seem to be there;
> But, alas! recollection at hand
> Soon hurries me back to despair.'"

June 2d, Mr. Stevenson resigned as speaker, having been nominated by the President as minister to the English court. A lively contest for the vacancy ensued. Ten ballots occurred before any one received the requisite majority. On the first, second, and third ballots Richard H. Wilde, of Georgia, received the highest vote (Mr. Hardin receiving one on the second ballot). On the fourth, fifth, and sixth James K. Polk received a plurality. On the seventh, eighth, ninth, and tenth John Bell led Mr. Polk, and having a majority on the last ballot was chosen speaker. To the union of the enemies of Mr. Van Buren in the administration party and to the opposition the new speaker owed success. June 30th Congress adjourned, Mr. Hardin remaining until the closing hours of the session.

CHAPTER XIX.

A SOJOURNER.

HE who looked upon the meagerness of Washington City fifty years ago little dreamed that within a lifetime the beauty and magnificence of to-day would be realized. If Mr. Hardin sometimes spoke of it disrespectfully, it must be remembered that in his day the national capital had few admirers. "A national capital," writes Mary Clemmer Ames, "could only be fitly built by the nation. For many years the Congress of the United States refused to do this to any fit degree, and the result for more than one generation was the most forlorn city in Christendom." *

It was during the period of Mr. Hardin's service in Congress that the well-known English traveler and writer, Miss Harriet Martineau, visited America. She spent some time at Washington, and her references to her experience and observations there are extremely graphic.

"The city is a grand mistake," she writes. "Its only attraction is the seat of government, and it is thought it will not long continue to be so. The far western States begin to demand a more central seat for Congress, and the Cincinnati people are already speculating upon which of their hills or table-lands is to be the site of the new capital. Whenever this takes place all will be over with Washington; 'thorns shall come up in her palaces, and the owl and the raven shall dwell in it,' while her sister cities of the East will be still spreading as fast as hands can be found to build them. * * * *

"The city itself is unlike any other that ever was seen, straggling out hither and thither, with a small house or two a quarter of a mile from any other; so that in making calls in the city we had to cross ditches and stiles, and walk alternately on grass and pavement, and strike across a field to reach a street. * * * Then there was the society singularly compounded from the largest variety of elements—foreign embassadors, the American government, members of Congress from Clay and Webster down to Davy Crockett; Benton, of Missouri, and Cuthbert, with the fresh Irish brogue, from Georgia; flippant young belles, and pious wives, dutifully attending their husbands and groaning over the frivolities of the place; grave judges, saucy travelers, pert newspaper reporters, melancholy Indian chiefs, and timid New England ladies, trembling on the verge of the vortex. All

* Ten Years in Washington, by Mary Clemmer Ames, page 67.

this was wholly unlike anything that is to be seen in any other city in the world; for all these are mixed up together in daily intercourse like the higher circle of a little village, and there is nothing else. * * * *

"It is in Washington that varieties of manners are conspicuous. There the Southerners appear to the most advantage, and the New Englanders to the least; the easy and frank courtesy of the gentry of the South (with an occasional touch of arrogance, however,) contrasting favorably with the cautious, somewhat *gauche*, and too deferential air of the members of the North. One fancies one can tell a New England member in the open air, by his deprecatory walk. He seems to bear in mind perpetually that he can not fight a duel, while other people can. The odd mortals that wander in from the Western border can not be described as a class, for no one is like anybody else. One has a neck like a crane, making an interval of inches between stock and chin. Another wears no cravat, apparently because there is no room for one. The third has his lank, black hair parted down the middle, and disposed in bands in front, so that he is taken for a woman when only his head is seen in a crowd. A fourth puts an arm around the neck of a neighbor on either side, as he stands, seemingly afraid of his tall, wire-hung frame dropping to pieces if he tries to stand alone. A fifth makes something between a bow and a courtesy to everybody who comes near, and poses with a knowing air; all having shrewd faces, and being probably very fit for the business they come upon. * * * * * *

"Some of our pleasantest evenings we spent at home in a society of the highest order. Ladies, literary and fashionable, or domestic, would spend an hour with us on their way from dinner or to a ball. Members of Congress would repose themselves by our fireside. Mr. Clay, sitting upright on the sofa, with his snuff-box ever in his hand, would discourse for many an hour, in his even, soft, deliberate tone, on any one of the great subjects of American policy which might happen to start, always amazing us with the moderation of estimate and speech which so impetuous a nature has been able to attain. Mr. Webster, leaning back at his ease, telling stories, cracking jokes, shaking the sofa with the burst after burst of laughter, or smoothly discoursing to the perfect felicity of the local part of one's constitution, would illuminate an evening now and then. Mr. Calhoun—the cast-iron man—who looks as if he had never been born and never could be extinguished, would come in sometimes, and keep our understandings upon a painful stretch for a short while, and leave us to take to pieces his close, rapid, theoretical, illustrated talk, and see what we could make of it."*

In 1842, when it had changed little from the time of Mr. Hardin's last sojourn there, and of Miss Martineau's visit, it thus impressed a great English novelist. then traveling in the United States:

* Western Travel, Vol I., page 144, *et seq*. John Quincy Adams mentions meeting Miss Martineau, and says she was sprightly and entertaining, notwithstanding the ear-trumpet her deafness required. J. Q. Adams' Memoirs, Vol. IX., page 200.

"It is sometimes called the 'City of Magnificent Distances,' but it might, with greater propriety, be termed the 'City of Magnificent Intentions,' for it is only on taking a bird's eye view of it from the top of the capitol, that one can at all comprehend the vast designs of its projector, an aspiring Frenchman. Spacious avenues, that begin in nothing and lead nowhere; streets, miles long, that only want houses, roads, and inhabitants; public buildings, that need but a public to be complete, and ornaments of great thoroughfares, which only lack great thoroughfares to ornament — are its leading features. One might fancy the season over, and most of the houses gone out of town forever with their masters. To the admirers of cities it is a Barmecide feast, a pleasant field for the imagination to rove in, a monument raised to a deceased project, with not even a legible inscription to record its departed greatness.

"Such as it is it is likely to remain. It was originally chosen for the seat of government as a means of averting the conflicting jealousies and interests of the different States; and very probably, too, as being remote from mobs —a consideration not to be slighted, even in America." *

Mr. Dickens errs in assigning the cause that led to the selection of the District of Columbia for the site of the capital of the republic. Mr. James Parton is better authority on that subject, and the following is his interesting explanation of how the seat of government found its present location:

"The city of Washington, we may premise, was the unforeseen result of an after-dinner conversation between Hamilton, Jefferson, and two or three 'Potomac members' of Congress. Hamilton, finding himself in the minority upon one of his fiscal measures, implored the aid of Jefferson's influence over the Virginia delegation. 'Dine with me to-morrow,' said Jefferson, 'and I will invite some of the opposing members to meet you.' After dinner the subject was discussed, and two members agreed to change their votes—to save the Union, of course. It was observed, by one of the gentlemen present, that the measure proposed would prove so repugnant to the Southern people that 'some concomitant measure should be adopted to sweeten it to them a little.' A lump of sugar would be needful after the medicine. The lump of sugar proposed and swallowed was the selection of a site for the permanent capital of the country in the wilderness on the banks of the Potomac. In how many ways have the fortunes and the morals of the United States been influenced by that talk over Mr. Jefferson's mahogany in the year 1790!" †

The author of "Pickwick" was more deft at some other things than prophecy. Such as it was when he saw it, Washington remained substantially until near the outbreak of the civil war. But as the clouds

* American Notes, by Charles Dickens, page 51.

† Life of Andrew Jackson, by James Parton, Vol. III., page 596.

of war passed away and as the government put on new habiliments, its national city began to bedeck herself like a bride of the East. A half century has metamorphosed the straggling town, of whose future Dickens spoke so illy, into the handsomest capital of the world. In "American Notes" will also be found a description of a Washington hotel, and it is quite possible that the short-comings of that institution may have colored the epicurean Englishman's view of his surroundings. Such or similar were the stopping places that welcomed Mr. Hardin and his colleagues in his day.

Partly from motives of economy, possibly from a desire for greater comfort or luxury, "messing" was then a common mode of life among congressmen. Governor Thomas Corwin and Mr. Hardin messed together during the Twenty-third and Twenty-fourth Congresses, and other congenial Kentuckians, doubtless, completed the household. Messing was less unfrequent in that day than now. By messing is meant that several persons clubbed together, rented apartments, hired cooks, supplied their own larders, and thus maintained a domestic establishment during the session, which was broken up at the close. It was an independent as well as an economical arrangement, in which those participating exercised certain reserved powers over their expenditures, not possible at hotels and boarding-houses. There were, however, temptations to frugality in Washington life, the indulgence of which imperiled congressional prestige. The following is an illustration which also shows the possibilities of the franking privilege when liberally exercised: It is related of Joe L—, a congressman once representing the Louisville district, that he carried the principles of saving economy so far as to send his soiled linen home by mail under his frank to be washed, and that his wife returned it after that process, adding to the address, "Free, Jennie L—."

It would hardly be proper to look into the mode of life of these messing sojourners too closely. It would be difficult to imagine a household embracing Ben Hardin and Tom Corwin other than good humored. These two, at least, were not given to drunkenness or wine, yet it may be admitted that gaming sometimes afforded amusement. Congressmen frequently called at each other's lodgings, in a social way, and gatherings often occurred which were marked by roystering fun and good fellowship. A story is related of how, on one occasion, the Kentucky delegation wagered an oyster supper with the Georgia delegation that it could produce a Kentuckian "homelier" or more ill-favored than the latter could bring from Georgia, the

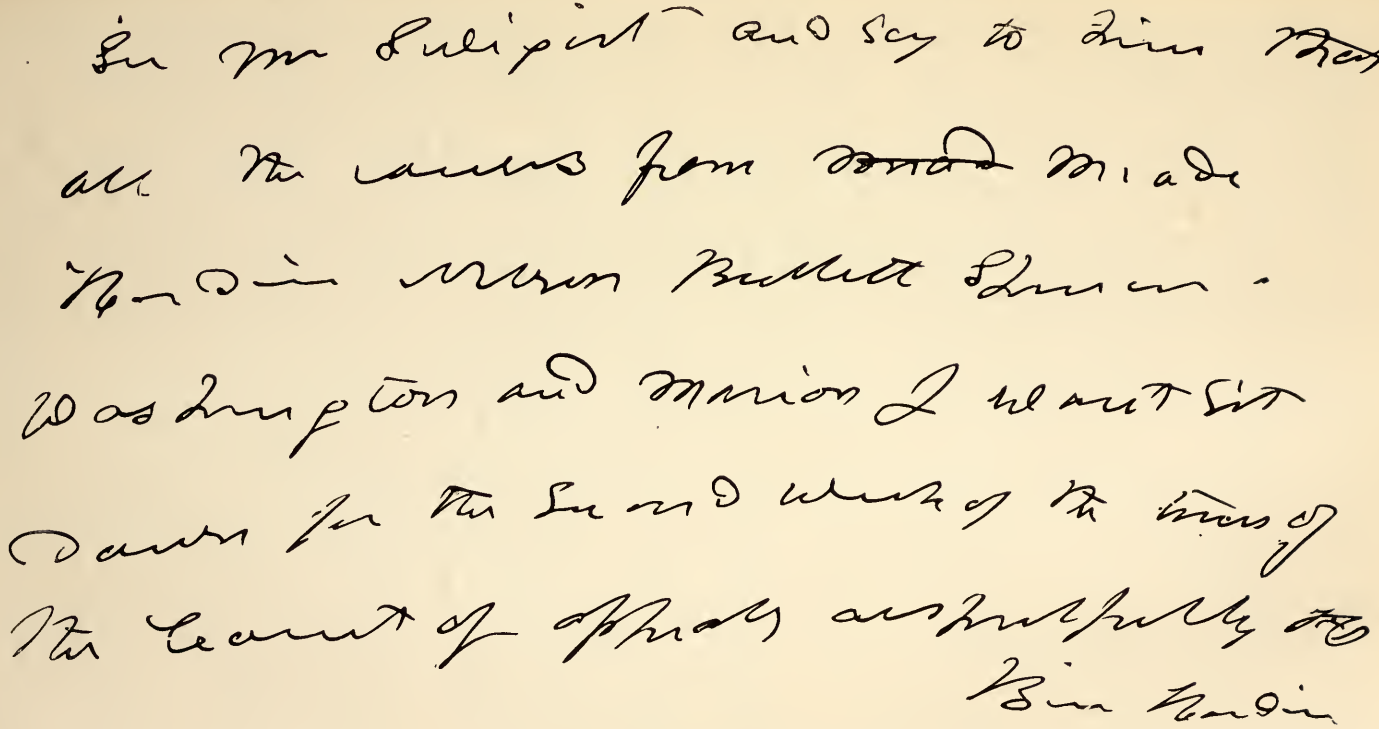
test to take place on the occasion of the supper. The appointed evening arrived, and the Georgia delegation had its man present, who, by a trick of throwing all his face on one side, made himself decidedly hideous. The Kentucky entry had, unfortunately, become so drunk that he was unable to be on hand. The Kentuckians were on the point of surrendering in despair and paying the wager, when one of them was struck with a happy thought. Francis P. Blair, a Kentuckian, was, at that time, editor of the *Globe*, and altogether one of the most noted men about Washington. He was possessed of great spirit and energy, and accomplished an astonishing amount of editorial labor, but he was, in appearance, haggard, feeble, and emaciated, and his face had a most cadaverous cast. In short, he was the absolute reverse of good looking. The party with the happy thought above alluded to called a hack and drove to the *Globe* office. He found Blair, and hastily explained that a number of his old Kentucky friends were having an oyster party, and that they desired his presence, and would accept no denial. Unable to withstand this friendly compulsion, Blair stepped into the hack, and soon reached his destination. As he entered, it required little discernment to perceive that social hilarity was in the ascendant. Albert G. Hawes, a jolly member of the Kentucky delegation, discovered him, and, heartily disgusted with the Georgian's facial tricks, shouted: "Blair, look as the God of nature made you, and I'll be d—d if the oysters ain't ours!"*

Let it not, however, be supposed that all delegations, or even all members of those delegations, frequently gave way to these jovial moods. Mr. Hardin thus referred to the dignified manner of life of certain senators, in 1815; and while it is true the royal affectations he criticised had passed away in 1835, there still survived a formal courtliness that smacked of an aristocracy:

"There was, as I said the other day, a small Federal party in the Senate, and if I said anything on that occasion offensive to the powdered heads of these gentlemen and their affected nobility, I will take it back; but it was literally true. They lacked the ribbons and the star; and that was all; they could not even board in the city, but must go to Georgetown and ride in their splendid carriages, so brilliant that when the sun struck upon them they gleamed as when the sun on the surrounding hills of Utica fell on the burnished arms of Cæsar's soldiers."

* Life of Sam Dale. Mr. Hawes possessed fine social qualities, and exuberant humor. John Quincy Adams, who was a good talker, but almost devoid of humor, referring to a trip of a party of Congressmen in May, 1834, to Harper's Ferry, says: "Mr. Hawes talked much more than his share, sometimes to the great entertainment, and sometimes to the no small distaste, of the company." J. Q. Adams' Memoirs, Vol. IX., page 142.

EXTRACT FROM LETTER FROM BEN HARDIN TO THOMAS W. RILEY.



TRANSLATION.

"See Mr. Swigert and say to him that all the causes from Meade, Hardin, Nelson, Bullitt, Spencer, Washington, and Marion I want set down for the second week of the term of the Court of Appeals. Respectfully, &c.,

"BEN HARDIN."

Congressmen had many other duties to perform, aside from those that are reported in the debates and proceedings. Committee meetings and labor thereat, investigations in the congressional library* and elsewhere for needed facts and statistics, encountering the lobbyist and hearing his insidious speech, and entertaining the occasional constituent who came to the national capital sight-seeing or office hunting, were some of the tasks, more or less agreeable, of the Representative. Mr. Hardin was accustomed to get copies of the poll books of the various counties of his district, and from these send documents through the mails to his constituents. A discourteous postmaster at Bardstown, an intense Locofoco of the Jacksonian stripe, once refused to deliver these missives. So Mr. Hardin, on his return home, procured a wagon and hauled them to the court-house, and there he distributed them, seasoning his favors with anathemas on the delinquent official.

Political "fences" at home and the general good of the "party" were matters of constant solicitude to the people's representative. In 1836 James Clark was the Whig, and Matthew Flournoy the Democratic, candidate for governor of the State. In 1832 the Democrats had elected that officer, and were now using efforts to choose his successor. "Unless a vigorous effort is made we shall lose the race," discouragingly wrote Robert P. Letcher from Kentucky to Mr. Crittenden at Washington. "It would be well to call all our delegation in Congress together," he continues, "and let each man determine to write six letters every twenty-four hours to his district in relation to the election of governor. I mean all except Ben Hardin. I should leave him to himself. Meet in the committee room, and let each man pledge himself to do his duty by writing letters forthwith. One Congress letter is worth a dozen from a private." Exactly what is meant by this reference to Mr. Hardin is not clear—whether kind or otherwise. Why it should have been otherwise is difficult to conjecture, as Hardin and Letcher were slightly connected, a brother of the latter having married a sister of Mrs. Hardin; and besides, Mr. Hardin had spoken earnestly, ably, and often for Letcher in the latter's contest with Moore in the Twenty-third Congress. It is possible Letcher may have supposed that the difficulties of Mr. Hardin's penmanship might weaken the effect even of a "Congress letter," or subject the party to the danger of new and unforeseen issues through misinterpretation of his correspondence.

* "At the library the book which Mr. Hardin took from my table and kept was transferred by the librarian from my charge to his." J. Q. Adams' Memoirs, Vol. IX., page 214.

It may be safely asserted that Mr. Hardin realized no other pecuniary profit from his congressional service than his salary, and some professional fees in the Supreme Court. Political ethics had not become as much relaxed at that period as at a later day, when a seat in Congress opened a road to fortune, in which trod many of the "honorable gentlemen." "Mr. Hardin was one of the old school of political morality," writes Colonel Ben Perley Poore, "and no blot sullied the fair fame of his long, although not continuous, congressional service." After his congressional career had ended, he indulged the following allusion to the little profit that had attended his service:

"I had the misfortune, and I rather consider it so than otherwise, from time to time, to have had a seat in Congress, and I found I could not stand the sacrifice and pecuniary loss longer than for two or four years at a time. Then I had to quit, and resort again to the practice of the law to repair the loss. At every session I expended not less than two or three hundred dollars in purchasing documents to send among my constituents. I took care to buy something of value, important documents, good speeches, not too much or too little, and well made."

The reports of congressional proceedings show that Mr. Hardin was an active and industrious member. His references to pending questions, and, much more, his discussions of them, evinced his familiarity with all their details and merits. When he spoke it was to utter his own views, and not to echo those of others.

"He was," says Colonel Poore, "a defiant parliamentary gladiator on the floor. Standing in the aisle by the side of his desk, with his head erect and rather an arrogant air and tone of voice, he would point the index finger of his right hand (which was crooked, like a note of interrogation) at his opponent, and rain upon him interrogatories and propositions couched in unmistakable Anglo-Saxon." *

John Quincy Adams, in his wonderful diary between 1833 and 1837, when he, like Mr. Hardin, was a member of the House of Representatives, very frequently refers to the latter. In alluding to his speech on the extension of the pension list, in January, 1834, Adams says: "Hardin spoke about an hour, chiefly in reply to Burgess, whom he tomahawked without mercy, though he was not present. The hour expired while Hardin was speaking, but by the suspension of the rule he was allowed to finish his speech."

In December, 1836, Adams mentions that "Boon, of Indiana, and Hardin, of Kentucky, spurted and bubbled for the sake of personal flings at me—Hardin indirectly. Boon directly. Hardin let out some

* Letter of Colonel Ben Perley Poore to author.

of his venom upon New England, and said we should have a little battle when we should come to debate the taking off the duties from grain and breadstuffs, because the crops had not failed in the States west of the mountains as they had in the Atlantic States." *

It is doubted whether Mr. Hardin enjoyed much local popularity while at the capital; in fact, the contrary may fairly be inferred. As a rule, he could safely be set down as an opponent of all appropriations, great or small, especially if connected with the district lobby. The mild aspiration of the Government clerk, not less than the imperious mandate of the President of these United States, found an ever-recurring obstacle in Mr. Hardin. The first named (in his estimation) was constantly taking the preliminary steps (unintentionally, no doubt, but recklessly) to bring upon the country the horrors of the French Revolution. His remarks on a proposition to create an additional clerk in the Department of State to assist in arranging and preserving the public archives clearly indicate that he strongly suspected the attachment of that class of American citizens to the principles of liberty. The following is the report:

"Mr. Hardin's duty had led him frequently to look into the offices in our departments; and he verily believed that one-half the number of clerks there employed could do the whole business. Like the gentleman from Massachusetts (Mr. Lincoln), whose speech had provoked such violent and undeserved attacks (although there was nothing exceptional about it, save that it had been more extended than was necessary, but was certainly a very clear and able speech), he believed that the arranging of these papers could be accomplished by a little extra labor of the clerks already employed. It seemed that these department clerks had established an arbitrary rule respecting the portion of time that they were to labor.

"Mr. Hardin knew very well that in the counting-houses in Philadelphia, in Baltimore, in Louisville, and Cincinnati, first-rate clerks were employed on salaries of five and six hundred dollars, and were daily employed for eight, ten, and twelve hours out of the twenty-four. But here were a parcel of clerks, some hundreds of them, who entered their offices about half-past nine, read the papers till ten, wrote a little, then smoked their cigars, and hung around till between two and three o'clock, and then all left their offices; or, if they remained one minute beyond that time they must receive extra pay. Let gentlemen look at the clerks of the courts, and they would find deputy clerks regularly laboring for twelve hours out of every twenty-four, on salaries of four and five hundred dollars. Yet here were great, big, fat, sleek gentlemen, who, if they worked three or four hours over the time, must have an extra compensation.

* J. Q. Adams' Memoirs, Vol. IX., page 324. Mr. Savage in his "Living Representative Men," spoke of Hardin as having the reputation of being the terror of the House. Page 145.

"Mr. Hardin referred to the blue book to show the number of clerks in the State Department. Here were thirteen of them who could not spare an odd hour apiece to assort, label, and index these records. Why not take it by turns, one to-day and another to morrow? If they could not do as much as this, where was the necessity of continuing such men in office? New papers had, no doubt, accumulated, which required labeling as much as these did. It was their duty to label the whole of these papers. Yet these fat and sleek gentlemen, who could only work three or four hours a day, were some of your finest toast-makers at all public dinners; and he had no doubt that many of the finest of those letter-writers, whose productions so enlightened the public, were from among these same geniuses. If they could not work six hours a day, let them walk out of office—they were fat enough, anyhow—and let others take their places. It seemed that all governments had a natural tendency to increase their expenditures, and went on growing more and more extravagant till they finally broke down, and there was a revolution. It was this which, in part, had brought about the revolution in France. They continued, as they proceeded in their downward course, to divide and subdivide the public service, and all who were employed were striving to increase their pay and diminish their labor."

Mr. Hardin did not stop at criticising the government clerk. In April, 1836, the general appropriation bill being before the House he proposed to strike out the item of one thousand dollars to Mr. Peters, the reporter of the Supreme Court, because certain decisions to which he alluded had been reported inaccurately. Another member, however, having suggested that the reporter was considered an industrious man in his profession in Philadelphia, and that if he failed in his duty the proper remedy was removal, Mr. Hardin withdrew his motion, evidently not aware when he made it that he was questioning the attainments of a "Philadelphia lawyer."

In 1835, while Mr. Van Buren's law partner, Benjamin F. Butler, of New York, was attorney-general, Congress was asked to provide a library for his use. Mr. Butler was not only a hypercritical lawyer, but it was charged that he always stood ready to justify by his legal opinions the greatest stretch of power the President saw fit to indulge, and the President at that period pressed his prerogative to its utmost tension. In 1835 the lunatic Lawrence attempted to assassinate General Jackson as he emerged from the capitol, but was arrested in the act. The physicians called to examine as to his mental condition pronounced him insane beyond question. General Jackson, who saw everything of an exciting nature through the medium of his passions, declined to accept this decision, but insisted that Lawrence was the

tool of his enemies. Mr. Butler advised that while Lawrence might have delusions, yet that he was *generally* sane. In short, he was a thorough-paced courtier of the Polonius order. For such an official the opponents of the administration felt no partiality. Mr. Hardin's opposition was ostensibly placed on other grounds, but between the lines something of the above may be read.

"He said he was utterly opposed to granting appropriations for separate libraries, either to the departments or to the attorney-general. He would willingly vote rather for an increase of ten thousand dollars more for the library of Congress, where he supposed the attorney-general, as well as the other heads of departments, might readily come for such books as they wanted. The application for books for the use of the attorney-general's office never, heretofore, has been made; and as this attorney-general had, with his public business, private practice to attend to, as well as former attorney-generals, the appropriation, consequently, would be of a private benefit, rather than to the public. For, if he practiced as they did—and doubtless he did—he must have his own books to enable him to do so. He wished the Congress library to be increased, desiring, like the ancient Roman, to see the capitol the finest building in the universe; so ought, he thought, their library to be the boast of their country * He opposed the appropriation believing that, from the day Congress would sanction a system of separate libraries, thenceforth their own would go down; and he therefore rejoiced at having an opportunity to record his vote against the proposition."

Formerly one of the most respectable bodies about the national capital was more or less known as the "naval lobby." It was a body that asked many favors of Congress—was entitled to many and received not a few. Mr. Hardin thought it received undue consideration, and in the Twenty-third and Twenty-fourth Congresses he was active in opposing its claims by vote and argument. February 18, 1835, the bill to increase the pay of naval officers being before the House for consideration, Mr. Hardin, in closing his remarks, is reported as follows:

"Upon the subject of gratitude, he could call one fact to the recollection of gentlemen, that, if a man died an officer in the naval service, his widow was pensioned from five years to five years. He knew widows of meritorious officers in the army who were starving. One in his own neighborhood, whose husband, an officer in the army, fought at Raisin, Niagara, and at New Orleans, who was now without a cent in the world; and he had brought a letter from her to General Jackson, stating that she was reduced to want

* If Congress had been more imbued with Mr. Hardin's enthusiasm for learning, the new Congressional library building, instead of being in the architect's brain, or drawn on paper (its present stage), would long since have been completed, and constituted a fit receptacle for the grand collection that overflows the present library. (Note by author.)

and beggary, and the general promised to do all he could for her. He knew a similar instance of a major in the army, who died at New Orleans, whose widow and children were also reduced to want and beggary. Hence, it was that he said the navy got more than the army. He wished to God there was a law providing for the widows of all those who lost their lives in the service of their country. But he would again call the attention of the House to the contrast between the pay of the two services. Mr. Hardin then read an estimate of the different sums paid to the officers and crews of various ships engaged during the late war.

"Mr. Hardin then referred to the addresses of Commodore Porter, Lord Nelson, etc., to show that prize money was the greatest incentive for sailors to fight well, relating an ancient anecdote to that effect, of a soldier, who, having lost his budget, as he called his wealth, on an assault, was the first to mount the breach, and recovered by the plunder of the town more than he had lost. On another occasion, being called on by his commodore to do the same, he requested some other man to take his place who had lost his budget, for he possessed one. A gentleman referred to a captain, yesterday, who had been twenty-nine years in the service, but who was not worth seven hundred dollars. Mr. Hardin said there were some men whom you could not make rich. But he would refer to the numerous captains in this city, living in the finest palaces—no, he must not say palaces—in the most splendid mansions, built by the public money they had obtained. Ask a commander how much he had made, and he would reply, why, in the last war, probably about one hundred thousand dollars. It was said,

> "'Their march is on the mountain wave,
> Their home is on the deep.'

"Their march here was too often from their mansions to the capitol, and their home was—— He observed several gentlemen in the gallery.

"Mr. Hardin referred to the officers of the army who were then toiling in the West, and who were not represented by their committees, etc., and complained of the proposal of the army having been rejected by the select committee, and the navy alone taken up and acted on (Mr. Watmough explained), contrary to the just expectations of all.

"In regard to a lavish expenditure of the public money, the history of the last three hundred years furnished us with one fact, that it was the natural tendency of all governments to increase their expenditures from year to year. Such was the case with the governments of Europe, and he was afraid the government of the United States would exhibit the same melancholy picture, that its expenses will be so increased that, at last, they will become too oppressive and onerous for the people to bear, and, according to the language of the other House, reform or revolution must be the end of it. It was the lavish waste of the public money that brought Charles I., of Eng-

land, and Louis XVI., of France, to the block, and it is one of the main causes of all the revolutions of empires that have ever happened. Gentlemen say that the navy is a popular branch of the public service. He agreed. But ought that House to legislate for fashionable attachment? He knew there was a continual struggle to get expenditures on the seaboard. He had no wish to impeach the integrity of gentlemen who were so zealous on the subject of fortifications and other works on the seaboard, but they could not help being acted on by their feelings. In the language of Sir Robert Walpole, prime minister of England, he said they came up, year after year, to be shorn like sheep. We, said Mr. Hardin, come from the interior every year to be shorn for your fortifications on the seaboard, but I, for one, am not exactly like the sheep, for, although I might be willing to be shorn, I will make a noise about it. Mr. Hardin concluded by saying that he had a great many more observations which he wished to have offered on the present occasion, but he was unwilling to intrude too far upon the indulgence afforded him by the House, for which he offered his acknowledgments, and he should probably take some other opportunity of giving his sentiments more at length to the public."

Mr. Hardin's course in opposing appropriations so constantly and indiscriminately subjected him on one occasion to the hostile criticism of the impetuous Henry A. Wise, then a prominent figure in Congress. As to how Mr. Hardin was regarded in the House by his political adversaries may be inferred from the following remarks of the Virginia congressman:

"Mr. Speaker, one would be led to suppose, sir, that the gentleman, from his uniform and earnest opposition to all money bills, was fighting at his late period of life for the fame of an economist and reformer. When the Alexandria canal bill was up, there was the gentleman from Kentucky; when Hull's claim was before us, there was the gentleman from Kentucky; when Meade's claim was presented, there was the gentleman from Kentucky; and now that the navy bill is on its passage, there is still the gentleman from Kentucky. Such indiscriminate opposition to every description of claim we might suppose to proceed more from habit than from calculation. But, sir, when the Louisville and Portland canal bill came up, there was not the gentleman from Kentucky. And at the very moment the gentleman was so manfully opposing this reasonable increase of navy pay, we found him entertaining us with the most delightful eloquence upon the sufferings and services of the army, and perfectly content with the navy pay, when on a former occasion I have shown and now assert that the pay of the army is more than double that of the navy. The army, sir, is to the gentleman what the Louisville canal is. It is stationed in part in the West, and clears the path of settlers on the frontier. It is not regarded with the same contracted view as the navy is

regarded by some, as solely for the seaboard, and therefore its services and its pay are fully appreciated by the gentleman. Why does the gentleman not bleat a little when wool is plastered on him as well as when it is shorn off? The gentleman, sir, is no more shorn, nor is the West, by increasing the pay of the navy than by increasing the pay of the army. If there is one branch of the public service in which the whole country is more equally interested than in another, it is that of the navy."

Not only was Mr. Hardin not the friend of the various persons and classes already referred to, but he was lacking in attachment for the locality itself. When it was proposed that Government take stock in a canal that was to connect Alexandria and Washington, he aided in defeating the measure, speaking twice on the subject. He was not even the uncalculating friend of Pennsylvania avenue (the pride of the national capital), across which flowed Tiber creek, a turbulent stream that in the days of the fathers of the Constitution meandered down to the Potomac with all the dignity of a "navigable stream," the waters of which were once intended "to be carried to the top of Congress house, to fall in a cascade twenty feet in height and fifty in breadth, and thence to run in three falls through the gardens into the grand canal," but which modern engineering has reduced to the ignoble office of an underground sewer.* On one occasion he inquired how it was possible the erection of stone arches over Tiber creek, and other repairs there, could require so large an appropriation as twelve hundred dollars? He was not aware upon what principle there could be such an expenditure for this purpose maintained, unless it was that peculiar principle on which some people of this city were known to act, namely, to get as much money as they could and do as little work for it as possible.

An attempt was made by various members to persuade Mr. Hardin that he was a representative of the District of Columbia as well as of his own district and State, and that its inhabitants were his constituents and entitled to his special consideration. But from this doctrine he entirely dissented. He regarded all their demands with distrust, and deemed it but just that the cities of the district should take care of themselves as cities did elsewhere in the Union. Nevertheless, he found from sad experiences that he who would withstand the district lobby needed Roman fortitude and virtue, for its fertility of resource was unbounded and in constant requisition. Every blandishment that

* In this good year (1887) the author stood upon the dome of the capitol and looked out for this waterway. Possibly he saw its "remains" straggling into the Potomac to the north-west, but a mature citizen standing by was not sure of it, although he remembered when it crossed Pennsylvania avenue in its "winding flow."

could influence, every appeal to the passions was invoked. The omnipotence of beauty's smile spared neither youth nor age, and unequal was the contest between it and virtue. Now and then an obdurate member required sterner regimen. Instances were known about that period where he received assurances that unpleasant consequences would result from contumacy. Mr. Hardin, realizing the situation, thus discoursed on the subject in 1835:

"It has been alleged that the people of this district ought to be the peculiar objects of our kind and munificent legislation, because they have no representative in Congress. When any one of the three cities in this district has business before Congress, its mayor and committees have the privilege of this hall. The people here have more weight in this House than the representatives of almost any State in the Union. The members of Congress associate with them, partake of their hospitalities, and lend a kind ear to their importunities. These means they are not sparing of, but exceedingly liberal. Their attentions seem to increase or diminish as they think they can operate on the members, when they have some object in view. When these means fail on particular members, a resort is had to abuse and insult, and not unfrequently anonymous letters are sent to the rebellious and refractory members, some containing threats and menaces, and others are deterred from opposing them from the dread of slander and scurrility. For, as Sir James McIntosh said in his celebrated defense of the French printer, who was prosecuted in England at the instance of Bonaparte, for a libel on the then existing French government, 'there was no man so low and debased, or so high and exalted, as to be entirely insensible to the approbation or disapprobation of his fellowmen.'

"It is the opinion of mankind upon the actions of others that is the great regulator of the morality of the world. For man, when left alone, and uninfluenced by the opinions of others, will run into excesses of every description: 'His heart is deceitful above all things, and desperately wicked.' I am told that some of the people who live in, or are now in, this city, are so provoked at some of the members of this House for refusing to give and grant, with a liberal hand, all they ask for that my honorable friend to the right, from New York (Mr. Mann), and fellow-laborer in this good cause of retrenchment, has called down upon himself, from some of them at least, so deadly a hate that he is not only under the ban of their displeasure, but even some of his old friends are threatened that if they do not abandon him they shall be put out of the pale of society.

"A few of us here have to bear their cold disdains, scoffs, and contumelies; but I tell my worthy friends, who are deserving public servants, and especially my friend from Pennsylvania (Mr. Beaumont), now before me, who is so steadfast and unwavering in the good cause of retrenchment and

reform, not in name, as is the fashion of the day, but in reality, not to be deterred, but persevere to the last. Rewards are promised us elsewhere, the smiles of our constituents, and, at all events, an approving conscience, of which none can be deprived who believe they do right. As to myself, their taunts and scorns I cast back with proud disdain. I have been here a number of years, and always pursued the same policy, never to give away one dollar of the people's money unnecessarily. At the end of the session, with a cheerful countenance and light heart, I journey toward the setting sun. When I reach the top of the western foot of the lofty Allegheny, I look down upon the western world widespread out before me. In a moment my imagination views the great valley of the Mississippi, extending from the Allegheny in the East to the top of the Rocky mountains in the West, and from the frozen lakes of the North to the Gulf of Mexico in the South, averaging a width of two thousand miles and a length of twenty-five hundred—as large as half of Europe. Its great variety of climate; an unparalleled fertility of soil; its bold and navigable rivers; the rapidly-increasing population, already spread over a vast extent; the honesty, morality, and industry of the people; their simplicity of manners and energy of character,—when I compare these qualities with the people left behind; their vanity, show, vain pomp, idle parade, and ridiculous pageantry; their prodigality, their effeminacy of character and insincerity of heart, my soul swells with becoming pride at the comparison, and turning toward the East, in the language of the dying Christian I am compelled to say, 'Farewell! farewell! vain world, I am going home!'"

CHAPTER XX.

THE FRENCH PARTY DEFENDS ITSELF.

IN the spring of 1835, Mr. Hardin was again a candidate for Congress. Again it was his fortune to have a competitor, who, as happened two years previously, hailed from Washington county. Popular and powerful as was Dr. Rudd, much stronger, in many respects, was Governor John Pope.

At the opening of the canvass, Governor Pope was sixty-five years of age, of large experience and great ability, and still retaining his faculties in full vigor. An important figure in State history, of whom little has been written by those who have essayed the task, and yet his career was of more than ordinary interest. His first step in public life, it must be admitted, was ominous. Using a homely phrase, "he stepped off the wrong foot," when, in the State Senate, in November, 1799, he attempted to amend the "Resolutions of '98," unsuccessfully, of course. If Kentucky ever had political gods, those same resolutions may be thus classed. In 1800, he was chosen presidential elector, and voted for Thomas Jefferson, some amelioration, certainly, of his *faux pas* of the year before.

In 1802, despite his iconoclastic disposition manifested in 1799, he was elected representative to the Legislature from Shelby county, where he then resided, and at which place he had been admitted to the bar. Not long after this event, he removed to Lexington, where he represented Fayette county in the Legislature in 1806 and 1807, being a colleague of Henry Clay in that body. Although yet a young man, he had achieved eminence in his profession and prominence in public affairs. In 1807, he was elected United States Senator over General John Adair, one of the sitting members.

The latter was so chagrined at defeat that he resigned his unexpired term, and thus gave Henry Clay the opportunity of filling the vacancy. Before the expiration of Governor Pope's term, war with Great Britain was declared, which, unfortunately for his career, he opposed. Why he opposed a measure so popular in the West is most probably to be attributed to domestic influences. His first wife was the daughter of General William Christian and niece of Patrick Henry.

She having died, he married Miss Johnson, daughter of the American consul at London, a sister of Mrs. John Quincy Adams, a woman of great beauty. Miss Johnson was of English birth, and, possibly, so far sympathized with the mother country as to use her influence with her husband. At the end of his term, as Henry Clay said of another, "he was permitted to retire."

He returned to the practice of his profession, in which he realized both reputation and profit. He was especially distinguished as an advocate in criminal cases. Amos Kendall, then but recently arrived from New England, gives an account in his Autobiography, of the trial in March, 1815, at Lexington, of one Payne for wife-murder. After referring to other details of the case, he says: "Mr. Pope, in behalf of the prisoner, then commenced in a very eloquent strain, addressed to the feelings of the jury. He summed up the evidence very handsomely, but was led from his subject by many irrelevant ideas which seemed to strike him on the occasion, and at length made his discourse tedious. I left the court just at night, but was told he continued his argument until nearly ten, and, though he had spoken six hours, did not finish! He seems to have no doubt of the fact, but hopes to save him on the plea of insanity; but he is no madman, and if he should be saved, justice will mourn."* The jury convicted the prisoner, notwithstanding Pope's efforts, and he was sentenced to death.

He was more successful in 1820 in defending Alerdice, in Green county, for murder. Although probably guilty, the prisoner was acquitted. "The effort of Mr. Pope on the occasion," says Mr. Allen, the historian, "was equal to any he had ever made before on a like occasion." †

In 1816, Governor George Madison died in office, and was succeeded by Lieutenant-Governor Slaughter. The latter appointed Governor Pope his secretary of State. Kendall says that when he heard of the appointment, he was "thunderstruck." Pope, after his unlucky vote against the war with Great Britain, had been esteemed a Federalist—a party that had really passed out of existence, but the very name of which was still odious in the West. Kentucky was overwhelmingly anti-Federalist in sentiment, and so the whole State experienced the sensation of Kendall. The unpopularity of Pope undoubtedly caused the question to be sprung against Governor Slaughter, that he was a usurper, that the lieutenant-governor could

* Autobiography, page 140.
† Allen's History of Kentucky, page 371.

not, as the Constitution then stood, succeed the governor on the latter's demise, and that the office consequently was vacant. This question became an issue in State politics, and Legislatures were chosen with reference to it. Finally Pope, to disarm popular clamor, resigned, and the agitation quickly died away. Governor Slaughter prudently acted as his own secretary during the residue of his term, possibly being a usurper to that extent after all.

In 1817, Mr. Clay, then a member of Congress, returned from Washington to find matters sadly "out of joint" in Kentucky over the passage of the compensation bill, increasing the pay of members of Congress to fifteen hundred dollars per year. For this unlucky measure Mr. Clay had unfortunately voted. His opponents saw, or thought they saw, their opportunity to accomplish his defeat. He was a candidate for re-election, and, after due consideration, it was determined by his adversaries that Mr. Pope should become his competitor. George D. Prentice, referring to that event, said: "Pope was a man of powerful eloquence and great family influence." In Prentice's "Life of Clay," there is an account of the canvass. "Mr. Pope," remarks the author, "in spite of his eloquence and powerful devices, found that he was fast losing ground, and at length, as a last expedient, determined to have recourse to a desperate measure."

The measure in question was nothing more desperate than a challenge to his competitor for a joint debate, which was accepted. Prentice describes the debate somewhat as a tournament between a couple of mailed knights, but winds up very much after the figure of the prize ring. "He (Pope) fell gradually back until he was pressed against the wall, and there his conqueror dealt blow after blow upon his now naked and defenseless head" (no doubt losing his helmet in the melee) "until the scene became intensely painful." Whether as the result of this polemic pounding, or from other causes, it is not known —but, at all events, Pope was defeated.

This rivalry between Clay and Pope seems not to have ended here —but survived for several years. In January, 1819, Judge George Robertson, at the time member of Congress, called on John Quincy Adams, then secretary of State under James Monroe, with a letter from Pope, and had some conversation on local politics in Kentucky. Mr. Adams, in his "Diary," thus alludes to this interview: "That State is divided between two parties, with Clay at the head of one of them, and Pope of the other. Clay, by the superiority of his talents, by a more artful management of popular feelings, and by the chances

of good fortune, notwithstanding the more correct moral character of his antagonist, has acquired a great ascendancy over him, and not only keeps him depressed in public estimation, but uses every possible means of the most rancorous and malignant enmity to ruin him."

They (Robertson and Adams) discussed candidates for governor in Kentucky, and the probability that Clay, if not himself a candidate, would support Richard M. Johnson, against whom Pope proposed Robertson's brother-in-law, McKee. Mention was also made of combinations by Clay in the West in order to secure the presidency on the expiration of Monroe's term—Pope having suggested to Adams the great importance of working to secure his own election. Robertson said (continued Mr. Adams, referring to the interview), "that it was expected there would shortly be a vacancy in the office of district attorney in Kentucky, and he wished the appointment might be given to Mr. Pope, to whom the office itself was no object, but who would value it as a mark of confidence in the administration. I told him I had every possible feeling of good will toward Mr. Pope, but having made it a principle to avoid recommending to the President any of my family relations, if it was desirable that the name of Mr. Pope, who had married my wife's sister, should be presented to the President, either for the office named or for a foreign mission, I should wish it might be through some other channel than me. I had in no instance recommended to the President a relative of mine for any office."

Pope did not have the good fortune to receive the coveted "mark of confidence" from Mr. Monroe.

In 1820 Governor Pope was one of a committee appointed by the Legislature to digest a common school system, which reported the result of its labors in 1822. Not far from that period, having lost his second wife, he again married—this time to the widow of General Matthew Walton, the latter having been, it will be remembered, Mr. Hardin's competitor for a seat in Congress in 1815. Mrs. Walton resided in Washington county and was possessed of great wealth, and thither Governor Pope removed. In 1825 he was elected to the State Senate. At this period General Jackson had developed as a leader in national politics, and Governor Pope became one of his adherents, supporting him for the presidency in 1828. In 1829 he received the appointment of governor of Arkansas Territory, which he accepted. His friends regarded his action in this respect as one of the capital mistakes of his life. To the Pope family in Kentucky General Jackson owed his majority in the State in 1828. The governorship of the

Arkansas Territory was not only deemed an inadequate reward for this service, but Pope's friends thought it unbefitting his talents and character to accept what they regarded a comparatively paltry and barren honor.

He differed with President Jackson as to the course of the latter with regard to the United States Bank, and proffered his advice on the subject when the re-charter was vetoed. The response to this well-meant but impolitic action was a request for his resignation, which was tendered in 1835. In noting this last of his many political mistakes (and a mistake it was for a subordinate to advise such a chief at that particular juncture), it seems but just to say that nothing but great talents and indomitable will could have overcome the effect of his many acts of impolicy. If he had floated with the popular current instead of seeking to stem it, he might have seriously transposed in his own favor some of the shining figures in American history. On resigning the governorship he arrayed himself with the opponents of the administration. Such had been his career up to the time he became a candidate for Congress in opposition to Mr. Hardin.

Governor Pope was five feet ten inches in height, large-bodied, heavy-set, broad shoulders slightly rounded, inclined to be fleshy, one hundred and eighty or one hundred and ninety pounds in weight; of dark complexion, regular features, a fine eye, or, as some one expressed it, the keenest eye ever in a man's head. One arm had been amputated between the shoulder and the elbow in youth, and that stump, when he spoke, was in constant motion, not derogating, however, from the effect of his oratory or the dignity of his presence. He was not a witty man, but sometimes very bitter in speech. He was of unquestioned courage, and, though physically disabled, was a dangerous adversary in personal conflict. A rock was his favorite weapon, which he could throw with great force and accuracy. He notified Mr. Hardin at the opening of the campaign that he required to be treated as a gentleman, and that on failure he would hold him to personal accountability. It was said to have been a very quiet and exceedingly dull canvass.

One who personally knew him said that, when in debate and fully roused, he was unapproachable. The harder the contest the more exhaustless seemed his resources. Dr. Allen, a Virginian residing in Shelby county, heard Hardin and Pope debate at Taylorsville during this canvass. He was familiar with the best oratory in Virginia, but he said he had never heard anything equal to that debate. Mr.

Collins is mistaken in classing Pope with Henry Clay, Governor Letcher, and other Kentucky statesmen, "who owed not a little of their great personal popularity to the fact that they were skillful players on the fiddle." Governor Pope was physically disqualified for the exercise of that accomplishment.

The congressional district was at that time strongly Whig. Pope's hope had been to divide the Whig party and consolidate the friends of the administration on himself, the latter having no candidate. His recent desertion of Jackson prevented the latter, while his adhesion to the Whig party had been so brief as to give him no claim to its favor, especially in competition with such a veteran Whig as Hardin. But at the next term he was chosen, and re-elected for the two following terms.

He was a candidate for a fourth term. For the following incident of that campaign the author is indebted to General D. L. Adair, of Hawesville:

"In 1843," said General Adair, "William R. Grigsby, James E. Stone, and Governor Pope were competing candidates for Congress in the Bardstown district—then embracing Hardin county. The candidates made public addresses at the court-house in Elizabethtown on the first day of a circuit court. A large audience was present, that divided in support between Stone and Grigsby. Pope, at the outset, was substantially without following—resulting from his frequent change of party affiliation and the popular idea that he was unstable. Grigsby and Stone spoke first, and the debate was almost finished before Pope arrived. He entered the crowded court-room—venerable and very striking in appearance—swinging his armless sleeve. His speech was the most remarkable to which I ever listened. In the outset it was halting, his words came with difficulty, his sentences were not rounded, his gesticulation was unimpressive, his voice husky, and there was a painful impression that he was disabled by age. As he warmed up, however, all defects disappeared—his voice grew musical and his speech flowed in full and impassioned volume. The youthful fire of intellect transfigured the furrowed face and grey locks—and the old man was lost in the orator. He defended the integrity of his political course forcibly, earnestly, and eloquently. When, in his peroration, he begged that he should not be deserted and turned off in his old age, there was scarce a dry eye in the audience. The effect of his speech was wonderful. It converted almost every one who heard him. At the election that county gave him a large majority, but he was, nevertheless, defeated—Stone being chosen."

This was his last campaign, and the close of his public career. He died in 1845.

The contest between Hardin and Pope resulted in the choice of the former.

The first session of the Twenty-fourth Congress convened Monday, December 7, 1835, Mr. Hardin being present. James K. Polk was elected speaker by a vote of one hundred and thirty-two to eighty-four for John Bell. The Kentucky delegation, besides Mr. Hardin, consisted of Chilton Allan, Richard M. Johnson, and Albert G. Hawes, members of the previous session, and the following new members: Lynn Boyd, John Calhoon, John Chambers, Richard French, William J. Graves, James Harlan, Joseph R. Underwood, John White, and Sherrod Williams.

It is well, perhaps, here to correct a mistake occurring in Collins' History of Kentucky,* doubtless repeated from an older publication, "The Statesman's Manual," to the effect that William L. May was a member of this and the succeeding Congress from Kentucky. Mr. May was a member from Illinois for that period. A sketch of John Calhoon will be found elsewhere in this work.†

Lynn Boyd was a native of Tennessee, where he grew to manhood, then emigrating to Kentucky. His first official position was that of sheriff. In his twenty-seventh year he entered the Legislature, representing Graves, Hickman, McCracken, and Calloway counties. This was in 1827. The following year he was member for Calloway, and in 1831 for Trigg county. He began a long and brilliant congressional career the present session, serving altogether eighteen years, during four of which he was speaker of the House. He had begun life with limited education, and under no other auspices than his indomitable will and tireless energy. In his last years he aspired to the United States Senate. With a view to this, he sought the Democratic nomination for governor in 1859, but, being defeated, he was, against his protest, nominated for lieutenant-governor. The ticket that year was not unfrequently called the "Kangaroo" ticket. He was elected, but died before entering upon the duties of office.

John Chambers was a native of New Jersey, emigrated to Kentucky in youth, was thoroughly educated, and came to the bar in 1800. He served several terms in the State Legislature, for some years as Commonwealth's attorney, and entered Congress in 1827, serving one term. His next service was in the present Congress.

Richard French was a native of Kentucky, an excellent lawyer and active politician. He was a Democrat when that party was in the

* Collins' History of Kentucky, Vol. I., page 352.

† Chapter XXVII.

minority in the State, and so achieved success under difficulties. He had served several terms in the State Legislature, and now first entered Congress.

William Jourdan Graves was a native of Kentucky, born in 1805, and, on reaching manhood, studied law, was admitted to practice, and soon attained high standing at the bar. After one term of service in the State Legislature, he entered Congress the present session. He was re-elected for two succeeding terms. This ended his public career, save that he represented the city of Louisville in the Legislature in 1843. In February, 1838, Mr. Graves engaged in a duel, near Washington, with Jonathan Cilley, a congressman from Maine, in which the latter was slain. This event became the subject of much heated controversy, and proved unfortunate for Graves' career. "Depend upon it," says Crittenden, in a letter from Washington, just after the duel, to Leslie Combs, at Frankfort, "depend upon it, he is a pure-minded, noble-hearted fellow, and as brave as Julius Cæsar. He ought to have your sympathies. The Kentucky blood here is all warm toward Graves." But, as the letter indicates, the tide was against the successful duelist.

James Harlan was born in Mercer county, the first year of the century. Coming to the bar in 1823, he became prosecuting attorney in 1829, and first entered Congress the present session. He was long an active and distinguished member of the bar of the State, held many important posts, and died in 1863.*

Joseph R. Underwood had served in the State Legislature, and had been otherwise active in State politics. He was appointed a judge of the Court of Appeals, and performed the duties of that position for some years, and until he resigned to enter the Twenty-fourth Congress. He was an accomplished lawyer, of sterling integrity, and sound sense. The curious reader will find an excellent sketch of the principal events in his life in Mr. Collins' valuable history.†

John White was elected to Congress the present term for the first time, and was also chosen for the four terms succeeding, one of which he was speaker. Said John Quincy Adams, "White is a man of fine talents and an able debater, but his manner is so vehement and his articulation so rapid that it becomes altogether indistinct. He repeats the word *sir* every fifth word, and his discourse is one continued stream, without division into paragraphs or construction of sentences."

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* Mr. Harlan was the father of Hon. James Harlan, a distinguished member of the Louisville bar, and of Hon. John M. Harlan, associate justice of the Supreme Court of the United States.

† Collins' History of Kentucky, Vol. II., page 739.

At the end of his congressional service (1845) he became circuit judge, and the same year committed suicide at his home in Richmond.

Sherrod Williams had served several years in the Legislature, and now began his congressional career of three terms. Says one who knew him: "He was social, kind-hearted, and of fine address and personal appearance," all of which was marred by the "too frequent and intemperate use of alcohol." *

Mr. Hardin had a number of distinguished colleagues from other States the present session. Messrs. Pierce, J. Q. Adams, Cambreleng, Mason. Wise, Corwin, Polk, Bell, and Peyton were again returned. Two other familiar names are found on the roll of congressmen for the first time, Caleb Cushing, of Massachusetts, and Bellamy Storer, of Ohio.

On Monday, the seventh day of the session, the speaker announced the standing committees. Messrs. Johnson and Hawes retained their respective chairmanships of the former session, of Military Affairs and Post-office Department. Mr. Hardin was associated with Mr. Pierce and Mr. Peyton on the committee on the Judiciary. He was also a member of a select committee on the northern boundary of Ohio, of which Mr. Adams was chairman. Other Kentucky congressmen occupied subordinate positions in the arrangement of committees.

During the session Mr. Hardin was, as usual, an active member, taking part in all important debates. A great fire in New York city, involving a loss of many millions of dollars, was the pretext for a bill to make loans to the suffering merchants of that city, which Mr. Hardin opposed. He took part in the debate relating to the contested election of Graham and Newland, of North Carolina. Among other things he opposed a contestant being allowed counsel to represent him on the floor of the House. He favored paying the expenses of an unsuccessful contest where made in good faith. He was in favor of civilizing the Indians, but if troops were sent to punish them, he regarded the militia better and cheaper than regulars for that purpose. Congress at that period began extending its bounty to railroads, a policy Mr. Hardin opposed. The Pensacola and Perdido railroad and canal company sought a grant of the right of way through public lands for several hundred miles sixty yards wide. Mr. Hardin objected to this width, and moved an amendment reducing it to eighty feet, though he thought twenty feet quite wide enough.

He was one of a committee to report on abolition. Mr. Pinckney (of South Carolina), the chairman thereof, offered an extended report.

* Allen's History of Kentucky, page 274.

"Believing from the first," said Mr. Hardin, "that he had been placed on this committee to make up the notable number of nine, he had declined to attend its meetings or take part in its proceedings. There was one part of the report from which he entirely dissented. He understood it to be set forth that the abolitionists were few and their efforts insignificant. In this he did not concur and must enter his protest against it. He believed there were large numbers of abolitionists, and that the purpose of this report was to suppress the fact." An extended discussion followed, in which many southern members took part, by whom Mr. Pinckney and the report made by him were condemned in unmeasured terms. These were the distant mutterings of the storm that burst forth in all its fury a quarter of a century later.

The most interesting debate of the session arose concerning the relations between the American Government and France. During the time of Napoleon Bonaparte he had undertaken, by certain decrees, to forbid maritime intercourse on the part of other nations with Great Britain, with which he was then at war. For violation of these decrees American vessels were seized by France and confiscated. For losses thus sustained the American Government demanded reparation, but not until the year 1831 was a settlement reached. In that year a treaty was concluded between King Louis Philippe and the United States, whereby France agreed to pay an indemnity of twenty-five million francs, in six annual installments. These installments, it so happened, were not paid at maturity.

A bill of exchange, drawn by the secretary of the treasury on the French Government for one of them, had been protested for non-payment. The explanation made by the French king was that the Chambers had failed to make the necessary appropriations, but he hoped that after some delay necessary provisions would be made. President Jackson was an impatient creditor. In his messages he made frequent and lengthy allusions to the subject. To the second session of the Twenty-third Congress he had submitted whether further action of the French Chambers should be awaited, or whether Congress should "adopt such provisional measures as it might deem necessary and best adapted to protect the rights and maintain the honor of the country." The relations with France were the subject of long and heated discussion by Congress. The tenor of this debate may be judged by a question of Albert G. Hawes, of Kentucky, in the House. He asked "if there was already a French and American party in the House? If so, it was high time the people of Kentucky knew it; and he should feel it his

duty to go home and acquaint his constituents of the fact. They were accustomed to rally under the flag of their country." John Quincy Adams offered and spoke for the following resolution: "*Resolved*, that in the opinion of this House the treaty of the 4th of July, 1831, should be maintained and its execution insisted on *at all hazards*." This resolution was opposed by Mr. Hardin and others adverse to the administration. They regarded the resolution as an insulting menace to France, and imperiling the peace of the two countries.

Mr. Hardin spoke on the subject at great length:

"He entered into an examination of the foundations of these claims under the treaty. They had arisen from spoliations made by Napoleon Bonaparte, who had always refused to make any indemnity. Both Louis XVIII. and Charles X. had also refused to enter into it, and it was only on the elevation of Louis Philippe to the throne of France that these twenty-five millions had been acknowledged. To this king we owed the treaty, and he had omitted nothing within his power to secure its passage. Mr. Hardin also contended that the French Chambers, as the popular branch, had the same right to reject a treaty involving an appropriation as the House of Representatives in Congress had. Besides, the French had the power of making their own laws and their own constitution, and they had the right of putting their interpretation upon them. With these views, he thought it cowardly, he thought it dastardly, for this nation to threaten war. He could see no treachery, no backsliding in the king or his ministers. That king was surrounded with difficulties, and had made himself responsible for injuries done twenty-five years ago. What should we go to war for? A paltry sum of five millions. A war would cost us in one year not less than ten or fifteen millions of dollars, and would sweep from the ocean at least fifty millions of our commerce. And upon whom would the expense fall? Upon the hard-working, industrious farmer almost exclusively. Besides, Mr. Hardin had no feeling for a French war. He remembered when we had only two millions and a half of people, when we were overwhelmed with debt, and our little band of hardy patriots without arms or clothing, that France shed her blood and expended her treasure for us. Should we forget this? She stood by us when all the nations of the earth stood aloof from us."

Subsequently Mr. Adams suffered his resolution to be amended by striking out the last words, "at all hazards," and thereupon it was unanimously adopted.

This occurred the last day but one of the second session of the preceding Congress. On the last day the fortification bill was amended in the House, setting apart three millions of dollars, to be expended by

the President in defense of the country, should necessity arise, before the next meeting of Congress. This amendment was not agreed to in the Senate, and a committee of conference was thereupon appointed by the two Houses. That committee decided that the House should recede from its amendment, and this fact was reported to the Senate during the evening, but not to the House until after midnight, so nothing was done and no appropriation for fortifications made.

At the present session, Mr. Adams introduced a resolution of inquiry as to the cause of the failure of the appropriation for fortifications at the previous session. He advocated the resolution in an impassioned speech. He insisted that the Senate, not the House, was responsible. He ridiculed some of the reasons given in the Senate for voting against the three million appropriation.

"One of them was that the House inserted the appropriation in the bill without a recommendation from the executive. This, sir," said he, "was the great basis upon which was founded that burst of patriotic indignation and eloquence which would rather have seen an enemy 'battering down the walls of this capital' than have agreed to this appropriation for the defense of the country. Sir, only one step more was necessary, and an easy step it was, for men who would refuse an appropriation, even in the terms and under the specifications in which that was proposed, if the enemy were at the gates of the capital, I say, there was only one step more, and that a natural and easy one, to join the enemy in battering down these walls.

"At this stage of Mr. Adams' remarks (says the reporter), there was a loud burst of applause from every part of the House. The speaker called upon the House to aid him in the preservation of order, and remarked that such an innovation of the rules and dignity of the House had not been known for the last ten years."

Mr. Hardin arose to say something during the speech of Mr. Adams, but members called loudly for order and Speaker Polk decided him out of order. "Oh! very well, Mr. Speaker, but I will be heard some time yet," rejoined Mr. Hardin.

A few days afterward the House resumed the consideration of Mr. Adams' resolution, or, as it was styled, "last year's fortification bill," and Mr. Hardin obtained the floor. The following extracts from his speech happily illustrate some of the peculiar characteristics of his oratory, and at the same time furnish a vivid portraiture of the politics and politicians of that day:

"Mr. Speaker, it was either my good or ill fortune (for, at this time, I know not in which point of view to consider it) to obtain the floor last evening. To have consulted my own feelings and wishes on the subject, I ought

instantly to have proceeded with what I had to say. It was late, and, to accommodate some gentlemen around me, I moved for the House to adjourn, which motion was agreed to. Gentlemen in more remote parts of the hall voted for it, as a favor accorded to me. I owe and now tender to them my most profound acknowledgments for their kindness manifested on that occasion.

"Sir, the time, manner of presenting, and the subject-matter of the resolution now under consideration seem to be a phenomenon in legislation. To review our proceedings for some meetings past is neither pleasant nor instructive. They contain nothing to feed our pride, flatter our vanity, or redound to the honor of this House. There is something in them so strange, so unaccountable to an ordinary observer, nevertheless so much in character with some of the leading members of the administration party in this House, that I hope to be indulged until I recapitulate them.

"The appropriation bills have been reported to this House, and, put them all together, amount to something like ten millions more than for the same objects was appropriated last year, and near that amount more than an average year since the commencement of the administration of General Jackson. This excess may be considered by this House as a war measure, and will be so viewed by the nation and the world.

"These bills were, by an order of the House, at the instance of the chairman of the committee of ways and means, made the special order of each day until they are disposed of. This first bill taken up was that appropriating money for the navy; the House went into committee of the whole on the state of the Union for consideration of that bill. A war speech was made by the chairman of the committee of ways and means (Mr. Cambreleng), in his usual bustling, swelling manner. Several other speeches followed, and, toward evening, the gentleman from North Carolina (Mr. Bynum) commenced a warm, animated, and eloquent speech in favor of the bill, in a high-tone war spirit. The speech was about half finished, when the gentleman gave place for a motion for the committee to rise, as it was late in the evening. Next day, the whole House came prepared to enter with spirit into the discussion of our relations with France, and all the measures which were about to be taken connected therewith. The party of the little Kinderhook hero (Mr. Van Buren) seemed brimful of fight. We had been denounced, the evening before, by the gentleman from North Carolina, as the *French party*, which he declared now existed in this nation. The imputation we considered as unmerited, and intended to vindicate ourselves from so foul an accusation. Never did this House assemble in a higher state of excitement than was manifested on the next day. It was expected that the debate would progress with increased animation, and that many a parliamentary lance would be hurled, broken, and shivered into pieces. The galleries were crowded at an early hour. When the time

arrived for the House again to go into committee of the whole on the state of the Union on the navy bill, the gentleman from New York (Mr. Cambreleng) moved to dispense with the orders of the day, to take up the bill to relieve the sufferers by fire in New York. The motion prevailed, the orders of the day were dispensed with, the navy bill was laid down, and the bill to relieve the sufferers by fire in New York taken up. Some progress was made in that bill, but, before it was finished, nay, hardly commenced, the House adjourned.

"The next day, was the House permitted to begin where it had stopped? No; what then was the course of business? That very same gentleman from New York (Mr. Cambreleng), who is the leader of the Jackson–Van Buren party in this House, or, if not the leader, is put in a position by the speaker to lead, got up, addressed the House, and then read or alluded to a paragraph in a newspaper, which he said had attacked him personally; as if this House had anything to do with the newspaper controversies of the honorable gentleman. As usual, he pompously commenced a vindication of himself; but, before he had uttered more than one or two sentences, wound up by saying that the source from which the alleged slander came was beneath his notice and unworthy of him. I beg the House not to forget that, at the same time, he intimated that the subject referred to in the paper would be brought before the House in another shape, by the gentleman from Massachusetts (Mr. Adams), who instantly took the floor with the resolution now under debate in his hand, already cut out and made up to order. The rules of the House were again dispensed with, the gentleman from New York voting for it, and the present resolution was offered. I will not say that there was a secret understanding between those two gentlemen that the resolution should be brought before the House in this very extraordinary and unprecedented manner. The reason I will not aver that to be the fact is, because I do not know it; yet, there seemed to me to be something inexplicable in the matter, if there was no such understanding. Why did he rise, allude to the paragraph, and stop short, without proceeding with his vindication? He was too well acquainted with the rules of this House not to know that he was out of order.

"I have asked, and again repeat it, why, after he had commenced his defense, did he stop? and why did he intimate that the gentleman from Massachusetts would bring that subject before the House in another form? They must have conferred together, and the whole was a maneuver to enable the gentleman from Massachusetts to exhibit his resolution; which I consider an indictment, with one count against the members in this House who voted against the three million appropriation last session, another count against the majority in the Senate; but these two counts are only nominal; the real intent and meaning of the whole is to reach two of the honorable senators (Messrs. White and Webster), who are now before the people as

candidates for the presidency. It looks like a Van Buren trick; the hand of the magician is surely in this whole matter. If the gentleman from Massachusetts is capable of blushing or feeling one sensation of shame, that blush or sensation ought to be exhibited upon the present occasion. I call upon him to review his past life, the high and dignified offices he has filled, during a space of fifty years, with so much credit to himself and honor to the nation; and now but to behold his present fallen condition; the instrument of a vile intrigue. Self-debasement and degradation is a fatality which frequently awaits the inordinate ambition of an old man—that ambition which outlives his faculties.

"Mr. Speaker, I hope the House will pardon me for this short digression. I will proceed with the history of this resolution and its progress in the House up to the present time. The gentleman from Massachusetts, in support of it, addressed the House for nearly three hours in a most elaborate speech, alike famous for its length, violence, and vituperation of his former political friends, filled to overflowing with the bitterest invective. Some of his remarks I intend to notice hereafter. He was followed by the honorable gentleman from Virginia (Mr. Wise), who addressed the House at length on the opposite side, and who in his speech exhibited great industry, research, and talents. But the ability he displayed, although very great, did not so much attract my admiration as the bold and manly bearing in delivering his sentiments. He forcibly reminded me of what that stern republican Roman said, that

> "'A day, an hour of virtuous liberty
> Is worth a whole eternity in bondage.'

"When the gentleman from Virginia resumed his seat, the honorable chairman of the committee of ways and means (Mr. Cambreleng), with great pomp and parade, took the floor and announced what he intended to do when he should address the House. He said it was too late to proceed that evening, but, before he moved an adjournment, with great arrogance declared he would not reply to the gentleman from Virginia; that he intended to encounter a champion more worthy of his steel, alluding to Mr. Webster, of the Senate. I admired his courage, and felicitated myself that my eyes, at least once in my life, would be gratified by a sight of the battle of the giants. There was something to command my admiration in his high resolves. It was a laudable ambition, even if he perished in the conflict. I love to see men matched fairly. Let footmen fight with footmen, squire with squire, knight couch the lance and spur the fiery steed against knight. Fingal never left his rock and mixed in the strife of heroes until Lathmon was in the field.

"When the gentleman took the floor yesterday, I expected efforts commensurate with the undertaking; I listened to hear Jupiter thundering from Olympus' cloudy tops, or, if not the thunder of Jove, at least the music of the

spheres. But was there ever a man so disappointed! Instead of the grandeur, magnificence, and sublimity of thunder rolling along and shaking the earth from pole to pole, my ears were grated with the miserable sound of a wretched performer on a Jew's harp! If an enlightened stranger were to visit this city during the sitting of Congress, and attend the debates in the Senate and here, how this House would suffer in comparison! If he should chance to hear the chairman of the committee on finance in the Senate (Mr. Webster) developing, in his usual lucid manner, complicated questions of finance, and unfolding the almost exhaustless, although somewhat hidden, resources of this nation; and, after that, come into this hall and hear the chairman of the committee of ways and means on the same subject; whether the efforts of the great moneyed officer of this House would most excite his laughter or contempt, I can not tell; the sublime and ludicrous are so nearly allied. His feelings would be not unlike those of an amateur of the great and awful workings of nature, who had just been a spectator of Vesuvius or Ætna in the appalling grandeur of a tremendous eruption, and then turning on the plain below, and seeing a mole or ant hill emitting a pale smoke, and occasionally a feeble and sickly blaze.

"Mr. Speaker, I have been a member of this House or the Legislature of Kentucky for nearly twenty-five years. I do not profess to have an intimate acquaintance with the rules and regulations which govern, or, rather, ought to govern, parliamentary bodies; yet I do profess to know enough of the order of proceedings as will enable me to do, and understand how to transact, the business confided to me, either by my constituents or this House. I never made more of the rules my study than was needful for the doing of business. My ambitious aspirations have never been directed toward the speaker's chair. I can not give in to the modern doctrine, that, if the force of party, or the desire to propitiate the White House, should take a man from among us who is not above the mediocrity of this House, and make him speaker, he thereby becomes one of the wise men of this land; it is the man who is to do honor to the chair, and not the chair to do honor to the man; if he does not fill it, his littleness, by his elevation, only becomes more visible and striking. If the same man, when in the chair, should select a man below mediocrity in this House, and put him at the head of the most important committee, I am equally disinclined to believe that he thereby becomes 'a very Daniel of a man.' Sir, since Elijah went to Heaven in a chariot of fire, and cast his mantle on Elisha, and he thereby became a prophet, God has not vouchsafed for any other man on this earth to be thus gifted.

"Mr. Speaker, I declare to the House that such a resolution as the present I never before saw. Does it propose anything for the action of this House? It does not. We are to raise a committee in this House to inquire and report why a certain bill, which was before Congress at the last session,

did not pass. Let the committee report as it may, no action of this House can be based thereon or grow out of it. Can we impeach the members of the Senate, or of the last House of Representatives, who voted against the three million appropriation? Every man in this House knows we can not.

"One of the main objects of this resolution is to raise the committee. Will that committee examine witnesses? No. The gentleman from Massachusetts will draught a report, based upon his distorted view of the transaction, for well I know the part he took in it last session. It will be filled with bitter denunciations of his former political friends and associates, to conciliate the opposite party, and make his peace at the palace. I have no doubt the report will not exhibit any one fact exactly as it took place. To tell the truth, the whole truth, and nothing but the truth is far from the object of the gentlemen concerned in this matter. A war is to be made on the senators to cheapen and lessen their standing with the people of the United States. Messrs. Webster and White are to be assailed without mercy in the report, and food furnished for all the administration presses in the Union, next summer, to abuse those who voted against the appropriation in either House. I ask, does it become the dignity of this august assembly, the wisest and freest on earth, to degrade itself for such a vile purpose, the inglorious one of becoming panderers to collect and embody slander for the office-holders and office-hunters, some of whom are now feeding, and others expect shortly to feed, upon the 'spoils' of this nation, as if we were a conquered enemy, and who are the only self-styled, self-created democracy of the country, a word justly dear to a Republican, and only used in these degenerate days, by designing knaves, to flatter and deceive the people?

"I boldly and fearlessly pronounce the resolution to be unparliamentary, unprecedented, and disgraceful to those concerned in it. No man can misunderstand its object. It is an inquisition of entitling for Van Buren. If, Mr. Speaker, I had no other reasons than those I have just this moment assigned, I would vote against the resolution. If the gentleman from Massachusetts (Mr. Adams) wishes to cut a somersault, let him do it as a clown in the pit. Do not give him a spring-plank to leap from. I want to see him turn a somersault as a ground, not a lofty, tumbler. He is not unaccustomed to these things. He has frequently done it before, without the aid of a committee, and let him do it again.

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"The gentleman from Massachusetts attempts to throw the loss of the bill upon those who believed the House to be constitutionally dissolved at twelve o'clock P. M. on the 3d day of March last. Although I then entertained that opinion and acted on it, which opinion I have not since changed, yet, even if it were wrong, the gentleman ought to recollect that that error of opinion does not exculpate the gentleman from New York (Mr. Cambreleng). I ask the gentleman (Mr. Adams) if it would not be wise and prudent in him

at least to see who is the most affected by entertaining that opinion? If there be error in it, will it fall heaviest upon your old and deserted political friends, or on the new allies, whom you are now courting with such marked attention and assiduity, and who, after they use you, will not give you your expected and hoped-for reward; no, not even the thirty pieces of silver? General Jackson entertained that opinion and acted on it. Mr. Van Buren entertained that opinion, as a matter of course; by instinct, I suppose.

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"This argument of the gentleman from Massachusetts is a two-edged sword, and, when wielded by him, cuts ten of his new associates for one of his old friends. I, however, do not censure the gentleman for entertaining the opinion that the President and Congress can each hold their offices, one after the four years and the other after the two years expire. How long after the time shall expire they shall continue in office he does not state; at least long enough, I suppose, to do what they desire, and to finish what they have on hand. This question revives his ancient recollections and reminiscences. I once heard of a President who, between midnight and day, and that, too, after his four years had expired, made a batch of judges, to reward some of the high-toned Federalists of the old school for past services.*

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"The second member of the resolution, that we would insist on its execution, means no more than this: That we hold the highest and most solemn obligation on France that a nation could give, and that we would insist on its fulfilment. But did it point out how and in what manner we intended to insist? Did it say we intended to resort to arms, the last argument of nations? I answer, no. We carefully forebore to say, or even to intimate, what we intended to do. Our intention was to regulate our conduct by the subsequent action of the French. We, in truth and fact, designed doing nothing until the French Chambers should have an opportunity to act on the bill appropriating the twenty-five million of francs. We are desirous to wait, and suspend action until we should see what a sense of justice would do with the French people, or what the feelings of shame would do when the reprobation of the nations of the civilized world was pointed toward them for a breach of national faith in not fulfilling the treaty stipulations on their part. I, for one, never thought of such an appropriation being asked for and of this demand being based on the resolution of the House. I believe it is an afterthought of the gentleman from Massachusetts, and that he himself did not then suppose that such an appropriation became necessary in consequence of the adoption of the resolution.

"Connected with the observations of the gentleman just noticed, he made another, on which I feel bound to animadvert. It was to this import: That for three days a number of members spoke against the resolution, and then, in a crouching spirit of pusillanimity, turned around and voted for it,

* John Adams is referred to.

not daring to meet the just indignation and reprobation of their constituents at home. I was one of those members who spoke on that occasion against a resolution, and then voted for that which passed; but I deny that that debated for three days was the one which passed. The one that was adopted and passed by the House was worded to meet the views of all the gentlemen, because, upon a great question of national difficulty with a foreign nation, and more particularly with a nation of tremendous power, nothing could be more desirable than unanimity. The resolution against which the speeches were made contained, among other things, an expression that we would insist on the treaty 'at all hazards.' That expression we thought unbecoming the dignity of this nation. To say we insist on the treaty was enough, and all we ought to have said. Let the rest and residue be understood, which is no less nor more than this: That we knew our rights, and would, in a becoming spirit of moderation and true dignity, maintain them; that the pride of the people should not be wounded and humbled in the affair, and that the honor of the nation should come out of the contest, be its results whatever it might, unstained and untarnished. Did it become us to vapor, like a bully, by using the words, 'at all hazards?' It is no certain indication that a man is going to make a desperate battle in defense of his rights and honor because he gasconades, and deals out menaces and blows in the empty air, before he begins to fight. I have ever considered it as the certain sign of a coward, that fear is his ruling passion, and that he either wants to intimidate his adversary or goad himself up to the fighting point by his rage and fury. The word, 'at all hazards,' as little becomes us as it suited the occasion. To whom was it addressed? To the most sensitive, powerful, gallant, and chivalrous nation upon the earth. We wanted France to do us justice. We did not want war, although we did not fear it. The Americans know not fear. The bullying expression of 'at all hazards' would have produced an effect directly opposite to what we desired.

"I well recollect what took place in those days, ever memorable for the debates which took place, and not less memorable for the part the gentleman from Massachusetts played on that occasion, and certainly no expression, when applied to his conduct during that time, suits as well as the word *play*. He would speak on one day on one side of the question, as the House understood him, and the next day explain it away and advance a contrary doctrine. He alternated in this manner some two or three times. I had the honor of addressing the House after his last speech. I commenced my remarks by saying that the law in relation to wills always considered the last will as controlling or revoking all other wills made on the same subject; or if there was but one will, with contradictory provisions, the last clause controlled the previous ones; and, with that rule as my guide on the present occasion, I should consider the speech which the honorable gentleman from Massachusetts had just made as his last will and testament of and concerning our French rela-

tions. Mr. Archer, of Virginia, immediately suggested that the rule I had laid down was correct, but one explanation ought to be given; that was, that the testator when he made his last will was of sound mind and disposing memory; and when that rule was applied, he doubted whether the gentleman had made his will at all.

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"Mr. Speaker, there are momentous and mighty considerations which ought to induce Congress to be watchful over the purse of the nation. Recollect the President, by the Constitution, already has the sword of the nation. Give him the purse also, and we are an undone people. I do not speak with reference more to the present President than to any other who may come after him. The power and patronage of the President are enormous and alarming to all lovers of civil liberty. The executive of this republic has more real and substantial power this day than any crowned head in Europe. Satiated with the enjoyment of his power, he is about to retire; and, to show his contempt for the American people, he is about to put one of his minions into his office as his successor, whose only merit is in the servile boast that 'it was glory enough to have served under such a chief.'

"What way is left to us by the Constitution to diminish, check, and control it? No way but one, that is, not to give one dollar of the people's money more than is necessary to carry on the government, and every dollar we give to see how and in what manner it shall be expended, and to guard with great vigilance that it shall be expended in no other way.

"The government of Great Britain is a monarchy; but the king of that great and mighty nation has not the tenth part of the real power that the President of the United States has, and which he exercises in its fullest plenitude, day after day. In that country the people govern and control everything; here, the will of General Jackson is almost omnipotent. There the people can say to their king, emancipate your Catholic subjects, and their chains burst from around them. They can say what law they want passed, and he is obliged to sign the bill; no veto there; he dare not exercise it, at the peril of his head. They can bid him make peace, if the nations be at war, and peace he must make. They can tell him to dismiss his ministry, and they must go out of office. The power of the people, the Duke of Wellington, the favorite of the king, the pride of the nobility, and the conqueror in a hundred battles, has experienced upon several occasions.

"You will ask, Mr. Speaker, how it is the voice of the people reaches the king in his magnificent throne, and makes the public tremble at its footstool? I answer, by the simplest principles imaginable, which is ingrafted in their government; that is, to withhold the appropriation bills until the king and ministry do as they order to be done. I tell to every man in this House, and to every man in this nation, this solemn truth: Either to abridge the power of the President by altering the Constitution, or control the President

by the appropriation bills—refuse him the money, and he will be as powerless as Sampson was after his hair was cut off. The vile creatures who now minister to his power go in for 'the spoils.' Cato the elder, in the Roman Senate, for a number of years, regardless on what subject he made a speech, concluded them all alike—that 'Carthage must be destroyed;' so the members on this floor ought to conclude every speech with these words, until the object is effected—that the President's power has increased, is increasing, and ought to be diminished

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"The three million amendment must therefore be considered as a war measure; not positive, absolute, and certain, but left to the President for him to adopt or not, at his pleasure. War preparations and war itself belong alone to Congress—to adopt the one, and make proclamation of the other. In no event should the President be permitted to hold in the palm of one hand war, and in the other the olive-branch of peace. The people are to do all the fighting, and they alone should determine on war. Of all the men on this earth, a military man is the last to be trusted with this power. His character has been made by war. He has studied it as a science, followed it as a profession, and considers it necessary to his popularity and glory.

"It was impolitic to confide such a power in the hands of General Jackson. The fitness of every man for the trust about to be confided to him ought to be considered and weighed well before the act is done. What I might be willing to confide to Jefferson, were he President, I might be unwilling to trust to Jackson. I might be willing to leave peace or war to Jefferson, and unwilling to commit the same power to Jackson. So, on the other hand, I would confide to Jackson the command of an army, when I would not to Jefferson. But, in truth and fact, as I have said before, I would not leave the alternative of peace or war to any President. Nevertheless, this House proposed, by the amendment, to commit to General Jackson that delicate trust and duty, which, of all men living, he was the worst qualified to discharge. Had the amendment passed, instead of being at peace with France, as we now are—and there is every hope and prospect of its continuance—we should this day, no doubt, have been in the midst of a wide-spreading and bloody war. To decide impartially upon the conduct of those who voted against the appropriation last session (for the gentleman from Massachusetts has arraigned us all at the great bar of public opinion), let us see and examine the position of this Government, and that of France, in their relations with each other, at the time the appropriation was asked for.

"During the imperial government of Bonaparte, aggressions and spoliations, to a great extent, were committed by the subjects of the emperor upon the private property of our merchants on the high seas. The amount of injury was variously estimated by the two governments. These injuries were inflicted near thirty years ago. Satisfaction was demanded by this Gov-

ernment of Bonaparte, which was denied. After his dethronement, and the restoration of the Bourbons, a like demand for reparation was made by this Government of Louis XVIII. He refused to make satisfaction. After his death, and on the accession of Charles X. to the throne, indemnity was demanded of him, which he delayed and failed to render. When Louis Philippe was made king, in 1830, indemnities were demanded of him by our Government. He immediately opened a negotiation on the subject, and ultimately agreed to pay twenty-five millions of francs, out of which were to be deducted one million five hundred thousand, which the United States owed a subject to France, leaving four million seven hundred thousand dollars to be paid by the government of the French to the citizens of the United States, that being twenty-three million five hundred thousand francs. This money could not be paid by the king of the French until the Chambers should appropriate it. The constitution of France is exactly like our own on this subject, and I have no doubt Lafayette, who was concerned in making it, had our Constitution in view.

"The king and his ministers can make treaties, and stipulate for the payment of money; but it is the constitutional right of the Chamber of Deputies alone to vote the appropriation or not, as they please. So with our Government, the President and Senate can make treaties and stipulate for the payment of money, but Congress alone can appropriate it.

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"I have remarked, Mr. Speaker, that the refusal to appropriate the money at the last session has, I do verily believe, saved this nation from the horrors of war at this moment. France might have considered it a war measure pointed at her, and have immediately struck the blow; as, by the usages of nations, she would have had the right to do. When two nations have difficulties and collisions with each other, in this situation, if either commences preparations for war, the other has the right to commence hostilities immediately. This principle has been considered the settled law of nations in Europe for one hundred and fifty years past.

"The probability is, that the French, who have never refused to accept a challenge, would in this light have considered our law, had it passed, and instantly made a dash at our extended, widespreading, and immense commerce with her whole navy. On the other hand, when an extraordinary number of our ships should have been put in commission, manned, officered, and sent to sea, flushed with the spirit of enterprise and panting for war, would there not have been great danger that some of our hotspurs might have brought it on by firing into a French vessel? And one gun fired on either side upon the ships of the other, in the irritated state of feeling, would have lighted the flames of war, which would have been seen and felt all over the world.

"I think, Mr. Speaker, that instead of standing as criminals at the bar of public opinion, and the gentleman from Massachusetts prosecuting those

who voted against the measure, they are entitled to the thanks of the nation and the gratitude of the humane, philanthropic, and religious part of the world. The brave man and the soldier equally look on war as an evil, and the scourge of mankind.

"I have, Mr. Speaker, taken but one view of the impolicy of the measure; there are other and more important considerations connected with this subject, to which I now intend to call the attention of the House. These considerations are applicable as well to our relations with France last session as the present, and as we have now on our tables bills containing avowedly war appropriations to the amount of ten or fifteen millions, I shall, in my vindication of our conduct last session, occasionally refer to the present war measures now in agitation, and, in doing that, I will only be following the example set me by others. By the postponement last session of all war preparations, the bill to pay the five millions of dollars passed into a law by the law-making power of France. The payment of the money is withheld until some explanation by the President, that, in his message to Congress last session, he did not intend to impeach the integrity of the French nation, or question the honor of the king. The President says, individually, he did not; but, like a technical lawyer, specially demurs, and says: 'What I said was in my message to Congress; it was not addressed to you, and you have no right to notice it; it is a departure in pleading." And thus the matter now stands, alike reproachful to both parties. What an extraordinary spectacle is presented for the world to look upon and marvel at. Two of the most powerful and most enlightened nations in the world, old friends and allies, about to spill each other's blood in torrents, when this day there is left nothing to dispute about—nothing between them but ministerial etiquette, diplomatic jugglery, and special pleading.

"Mr. Speaker, it requires no small portion of moral courage for a man on this floor to speak his sentiments freely and independently on the great question now before us. We are in the minority in this House, which to some men is disheartening. Our opponents are flushed with the victories gained at the late elections over the Union. The majority, with which we are surrounded and overwhelmed, cries aloud for war. We heard it last session repeatedly, and have heard the same tocsin of alarm and intimidation sounded this year. It has been proclaimed that there were two great parties in the House—an American and a French party; the patriot and traitor; one ready to defend and the other to betray and destroy his country. When we are virtually charged with treason, the charge is received with shouts of applause by a part of the members of this House; and instead of being the hall in which assemble the congregated wisdom of the United States, it wears every appearance of a place for a mob to meet. I will not be dispirited. I will not be browbeaten. My constituents shall be heard. They have faced the enemy in the field, and I will face their enemies here. I will speak

nothing but what, if here, I believe they would approve. It becomes every man, on this great and momentous question of peace or war, to come out full and fair. If for war, say so; if for peace, let it also be known. Those of us who are against war ought not to stand back and be silent, but do all we can to stop it. But if the time shall come when a majority shall declare war, then opposition ceases to be a virtue, and all sides and parties ought to unite and fight it out like men. Should any one then give back, denounce him as a traitor. If that awful day of trial shall come, and our foes are to be met on the battlefield, my constituents will be able proudly to compare with those of the gentlemen from Massachusetts and North Carolina, and in the comparison they will not suffer.

"My opinion and advice are that we ought not to be hasty and rash in this matter. Let us wait, at least, until toward the end of the session, when we can hear from France. There is every hope, every probability, that the dispute will be amicably adjusted, and the money paid. Delay last session effected the passage of the bill to pay the money by the French Chambers. There is nothing of real difficulty between the two nations. All the supposed grounds of quarrel are the veriest diplomatic cobwebs. The opinion of the civilized world is against going to war for such a trifle, and public sentiment, in a few months, here and in France and among the other nations of the earth, may do a great deal toward the restoration of peace and harmony. Gentlemen say we must fight, or the national honor will be tarnished, and we shall be disgraced in the eyes of mankind. If I believed the honor, fame, or character of the Republic required the sacrifice of war on our part, I should not hesitate a moment. No honorable man, no proud, high-minded nation can pause one second between dishonor and war. But I do not believe that the character of the American people will suffer, even if we should not plunge headlong into this war.

"Mr. Speaker, let us again call to mind what this dispute is about, and not, in high-sounding phrases and pompous heroics played off in this House, lose sight of it. The insult which was offered to our flag was offered by Bonaparte, near thirty years ago. The American property which was captured on the high seas was his act; it was done by his orders, by his Berlin and Milan decrees; and by his courts of admiralty were the vessels and cargoes condemned and ordered to be sold. If the honor of the nation suffered, it suffered then. He would make no atonement for the insults offered to us and injuries done to our property. We did not then think of war; we pocketed the insult, and turned it into a money business by demanding a pecuniary indemnity. Even that was refused by that proud and haughty emperor. The like satisfaction was demanded of his successors, Louis XVII. and Charles X., which they refused. Louis Philippe, after a lapse of nearly thirty years, has agreed to pay for the injuries done, and, because some delays have taken place in the French Chambers in

relation to the appropriation of money, we now declaim about the insults originally offered, and describe pathetically the sufferings of our merchants one or two generations ago.

"When a man is injured and outraged in his person and property he has two remedies before him, either to fight for the insult, or go to law and demand an indemnity in money, commensurate to the extent of the injury sustained. If he demands satisfaction in money he waives the other remedy. It is in vain to talk about honor afterward in that affair. But suppose we carry the comparison and parallel still further. Suppose the original offender should die; an executor is appointed, and he dies; and then an administrator *de bonis non* is appointed, who gives his bond for the money, but does not immediately pay at the day appointed, is it an insult if any delay takes place? Certainly not. If my debtor owes me, and is able to pay, and still delays payment, whose character suffers in the transaction, his or mine? Most assuredly, his.

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"France is our oldest ally, our firmest and best friend among the nations of the earth. When we were in the midst of our revolutionary struggle, and our fate seemed to hang on a thread; when the fleets of Great Britain covered the ocean and her armies our land, aided by the powers of Germany; when we were in our infancy, few in number, and destitute of everything but real patriotism; our armies had been defeated, and we were retreating before the victorious enemy—all foreign powers refused to assist us, save one. None here will inquire what foreign power was that. The world knows that it was France; her young men, with Lafayette at their head, poured into America and helped to fight our battles; the colors of the two nations, ranged on the same side, floated in the air together; and many a noble Frenchman died in our cause, fighting for us, and winning the liberty we now enjoy, nominally, at least. In the assistance which France rendered to the United States during the revolutionary war, and until peace was made by her with Great Britain, her losses and sacrifices, in men, ships, and money, were immense. Thousands of lives were lost, and hundreds of millions were expended; and, for all these losses, sacrifices, and disbursements she never charged one cent.

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"I have remarked, Mr. Speaker, that I believed that this resolution was gotten up for effect in the canvass now going on for the next President, and that I believed that this war and war panic are intended for the same unholy purpose. It has been visible to the whole American people for some years past that General Jackson has been, and is now, ambitious of designating his official successor, and that all his power, influence, and patronage have been directed to the elevation of his favorite, whose only recommendation is servility, sycophancy, and abject flattery of the President—one who weeps when

he frowns, and laughs aloud when he smiles, and who has no merit but what is reflected on him from General Jackson. Like the moon, he shines by a borrowed light altogether.

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"This last new fortification bill awakens in me a kind of suspicion that the administration party does not expect war; but wishes, with war preparations, war patronage, and war appropriations, to carry the election in favor of the pet of General Jackson, which may God, in His mercies manifested toward this afflicted land, prevent. Who are the candidates before the people, and who are intended to be affected by this resolution? White, Webster, Van Buren, and Harrison. Harrison, Webster, and White are men whose deeds will live after them, and whose memory will be handed down to generations yet unborn. Their actions are of a kind to be claimed by the nation as public property, and are identified with their country's honor and glory. Little Van has nothing to boast except 'the honor of serving under such a chief as General Jackson.'

"Van Buren claims the presidency as a paternal estate by descent. He arrogates to himself, by a magical kind of inheritance, the glories achieved by Jackson in the late war. The party can not meet to do anything for him, unless it be on the 8th of January, the day when the western hunters won the victory at Orleans. I do not know whether it is calculated to excite our laughter or indignation and contempt at seeing the glory obtained on that day transferred from the West to New York—a State during our revolutionary war only famed for Tories. Is there any scene in the world so ridiculous as to see Van Buren's friends place him before the people as the war-party candidate, and denounce Harrison and his friends as pusillanimous, cowardly, and ready to betray their country—Harrison, who spent his youth, his manhood, and the prime of his life in camps and in battles, in fire and smoke, combating in his country's cause? As for Van Buren, he never smelled gunpowder in his life. Many a bloody field can attest Harrison's achievements and emblazon his fame and glory abroad. Kentucky has won laurels with him and under him. He always did her brave sons, living or dead, justice in the field and justice in his reports to the War Department. In this approaching election the world will bear witness that Kentucky, among her other great virtues, boasts the proud one of gratitude. I know that one of her sons in whom she is well pleased has been selected to run on the Van Buren ticket for vice-president. This is a New York maneuver; it is sop to Jowler. Kentucky will not bite at the bait. We would delight to do honor to the candidate for vice-president. He has also won his fame in deeds of noble daring; but he must recollect that if a man marries a woman below him in the grades of society he elevates her to his level; if above him, he brings her down to his own caste. So is the fate of the candidate for vice-president. The candidate for President on the same ticket regulates the votes.

"The gentleman from Massachusetts has said that those who voted against the appropriation of the three millions last session had but one step more to take, and that was to open the doors of the capital to the enemy, and then join them; that he was prouder of his vote last session, in favor of the appropriation, than any act of his whole life. How flaming is the zeal of the new convert. He was secretary of State eight years during the administration of Mr. Monroe, and was four years President himself, during all which time the French refused to indemnify us for our losses, and yet then he was not so full of fight. I recollect in the play of Cato, when he called his little Senate together at Utica, just as Cæsar was marching on the city, the fury and impetuous zeal of Sempronius, how he exclaimed:

> "'My voice is still for war.
> Gods! can a Roman Senate long debate
> Which of the two to choose, slavery or death!
> No, let us rise at once, gird on our swords,
> And, at the head of our remaining troops,
> Attack the foe, break through the thick array
> Of his throng'd legions, and charge home upon him.
> Perhaps some arm, more lucky than the rest,
> May reach his heart, and free the world from bondage.'

And how Lucius modestly replied:

> "'My thoughts, I must confess, are turned on peace.'

"I also well recollect the sequel, and I beg the House to mark it, and I hope it will somewhat attract the attention of the honorable gentleman from Massachusetts: Sempronius deserted to Cæsar the next night, and Lucius remained with Cato, and fought it out like a man. This same Sempronius whispered to Cato to beware of Lucius—that he was a traitor.

"Who are the men the gentleman from Massachusetts has attacked in his resolution? Whom has he abused in his speech, and whom has he denounced as traitors? for I disdain to notice his pitiful subterfuge, by saying he meant no one—it was only a personification, a figure of speech. They were his old friends and political supporters, who stood by him in former times and faced the battle and breeze; who, on account of their supporting him, have been proscribed by the government and party in power, and are in a state of exile as it respects their own government and the administration thereof; they are an abused and vilified set of men; their only fault, endeavoring to sustain him. In this situation, what a deplorable spectacle does the gentleman exhibit; the very man for whom they are now suffering has turned against them and joined the ranks of their enemies; has become their fiercest assailant, most inexorable foe; driven them to the wall, and then attempting to pin them up against it. How base the treachery, how black the ingratitude, and, at the same time, how melancholy the

sight, to see an old man, with the frost of seventy winters on his head, pushed on by a blind ambition and love of office, or rather the emoluments of office, thus to prostrate and degrade himself, and forever blast the reputation acquired by fifty years of honorable public service! When I recollect how, in 1828, in the contest for President between the honorable gentleman and General Jackson, I labored in his cause, rode over Kentucky, and addressed the people for hours together, with what indignation am I fired at his conduct now! In a spirit of true repentance do I declare, that if God will forgive me for what I then did, I promise never to do the like again.

"The gentleman from Massachusetts says we (meaning himself and others) have been accused of man-worship—alluding to his worshiping General Jackson. I do not believe that any gentleman ever accused him of such devotion to any man or friend in the world as to amount to man-worship. Cæsar, Bonaparte, and Washington were said never to forget a favor or desert a friend; if any person has ever charged the gentleman with that quality of the heart, I never heard it. I expect it is not the man the gentleman worships; it is office and its emoluments.

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"The Senate, late on the night of the last session of Congress, sent a polite note or resolution to this House, apprising it of the result of the agreement of the conferees, and inviting the attention of the House to the subject. This, the gentleman says, was a gross insult to this House; and, if there had been time, he would have asked of the House to have sent him with the resolution back to the Senate, and, if he had taken it there, he would have thrown it on the floor with ineffable contempt (accompanying that expression with a remarkable contortion of his body, by squatting, then jumping up with a jerk and a violent inclination of the body to the left). How ridiculous would such behavior have been in a gentleman of his age and standing; and with what pity would that dignified body have witnessed the impotent rage of an old man displaying such fantastic antics!

"Mr. Speaker, when we take a view of the present condition of the United States, there is everything to deplore, and nothing to console us. We appropriate every year millions upon millions for our navy, and it has gone to decay; scarcely a vessel fit for service. We have appropriated, since the last war, about fourteen millions for fortifications; they are now in a state of wretched dilapidation, but few guns mounted, and generally unmanned. No energy in our army, as our late disasters in Florida bear melancholy testimony; no spirit and love of enterprise in the officers. While the war is raging in Florida with all its horrors, and in its most frightful forms, and we are in the daily expectation of a war with France, what do we behold here, in this city, and in this hall? Day after day are we importuned to surrender this chamber to the Secretary of the Department of War, to deliver a lecture on history; I suppose the ancient history of the

Assyrians, Babylonians, Egyptians, Persians, Carthaginians, and Grecians. Instead of studying the plans of campaigns, marches, and battles, he is poring over the history of nations twenty-five hundred years gone by.* The general-in-chief of our army is president of the assembly balls, as our daily papers tell us, and, report says, night after night waltzing with little misses in their teens; and, when not at that, writing miserable plays for the stage.† There is no laudable spirit of enterprise and emulation in the army, navy, or any part of the public service. Why this state of things? Because promotion to office does not now depend on merit, but by bowing, fawning, and cringing, in the palace; for all power is there. When the chief there frowns and stamps his foot, the whole menial pack fear and tremble. We are thrown upon evil and degenerate times; our government has every symptom of a speedy dissolution.

"When the gentleman from Massachusetts charged treason upon a part of this House, the majority huzzahed, clapped their hands, and shouted, enacting just such scenes as took place in the convention during the Jacobinacal times of the reign of terror, in the days of Marat and Robespierre. When a man was denounced in the House by either of those blood-thirsty tyrants, the members of the convention applauded in a tumultuous manner, and immediately voted the arrest of the member denounced, however innocent. Before night the guillotine received its victim, and he was numbered with the dead.

"The storms of misfortune and adversity have been threatening us from every quarter—east, west, north, and south. They have gathered over our heads, and threaten every moment to burst upon us, and destroy our liberties forever. I put my hope and trust in God, who has saved us in all our trials and difficulties heretofore, and that He will yet preserve us free and independent, and dispel the clouds now lowering over us; and that He will give us once more a clear, serene, political sky."

After, and as it was believed as the result of this speech, Mr. Cambreleng, who had been a most useful member and the acknowledged leader of the administration party in the House to a very great extent, lost his controlling influence which, notwithstanding unquestioned talents, he was never able to regain.

The first session of the Twenty-fourth Congress ended July 4, 1836, and the closing or short session convened December 5th following. Mr. Hardin was present at its opening, and participated in discussing many of the questions before it. His first speech referred to the President's message. He opposed a reduction of the tariff that was urged because of a surplus in the treasury. He insisted "that that surplus had not been produced by the tariff, but from sales of public lands, which had of late been specially active. When these sales fell

* Lewis Cass was Secretary of War. † General Winfield Scott.

off, as they inevitably would, the tariff would produce no surplus." Thus he reasoned. He also made speeches on granting lands to revolutionary soldiers, against the admission of Michigan, on the establishment of a boundary between the United States and Texas, etc. None of his speeches are reported, except meagerly, and that against the admission of Michigan, which was of great length, not at all. In the last speech he ever made in Congress, February 28, 1837, he took occasion to manifest his sympathy for Texas, then struggling for independence. The following is from the report:

"The Government of the United States appears unwilling to step into the struggle between Texas and Mexico, and intends to leave them as they are. For his own part, if it was left to him, he would recognize Texas the moment she maintained her sovereignty, for her territory was large enough to constitute a separate and a great empire. She possessed more territory than Portugal or than Holland; less, it might be, than Spain and France, but certainly more than Great Britain and Ireland. Thus, her territory was large enough to form an independent nation, and, as to her government, that also was organized and in full operation, as much as was the government of these United States. He thought, therefore, we ought not to wait to make this recognition until Mexico consented to the act. In our own case, France acknowledged our independence four years before Great Britain abandoned her pretensions over us; and, at a posterior period, we ourselves recognized the republican government of France, when all Europe was in arms against her, refusing to acknowledge her, and asserting, sword in hand, the claims of the worn-down family of Bourbons. Also, in after periods of the French revolution, we acknowledged, from time to time, the different governments to which France was subjected, and why? Because they were governments *de facto*."

At midnight, March 3, 1837, the second session of the Twenty-fourth Congress adjourned, and Mr. Hardin's congressional career was finally ended.

CHAPTER XXI.

MR. HARDIN'S HUMOR.

IT is not proposed to dissect humor, nor deal with its anatomy or physiology. No kind of analysis of that insoluble quality will be attempted. No effort will be made to partition wit from humor or discuss their points of difference. The latter may be the atmosphere and the former the flash, as an excellent writer has said, but there is not a little uncertainty in the ideas conveyed by such metaphors.* Whoever attempts to run the dividing line between them will encounter that ancient cause of fruitful litigation in Kentucky courts—an "interference"—which, being interpreted, signifies the case where the boundary of one tract of land overlapped another.

Wit and humor seem often an irregular species of logic—not to be classed either in the inductive or analytic category. They are the merry handmaids of argument, if no more. What, indeed, is ridicule but a form of *argumentum ad absurdum?* Humor is a faculty that comes by nature. It can be cultivated and improved, it is true, but nature must first have provided the faculty. The enchanting voice of the *prima donna* is inherited, however much art may develop and educate it. The genius of humor dwells only with its elect. The faculty requires or concurs with certain mental aptitudes—close observation and acute discrimination, both as to character and events; a quick fancy, readiness at comparison and discerning similitudes and contrasts, as well as the power of accurate expression. There must exist a quick—an intuitive power of tracing effect to cause, the art of clear and ready reasoning, and a keen scent for sophistry. A prime quality in a wit is a deep and exact knowlege of human nature—its virtues and its frailties.

Humor has had its ages and fashions, and always its latitude, its nationality, and caste. The jest of the tropic would freeze in the arctic. The witticism of the cultured East seems emasculated in the rude and stalwart West. The humor of French and German jokes, for the most part, is not translatable to English perception. *Bon mots* are handed around on separate dishes in kitchen and drawing-room. If, as some say, the fun of the Pharaohs yet survives in modern anecdote, doubtless much of its Egyptian flavor has been lost.

* H. R. Haweis, in "American Humorists," page 7.

It is interesting to note the progress of American humor. That progress has been concurrent with the advancement of the country in other things. It is difficult in these changed times to appreciate the humor of the artifice practiced by the settler of the wilderness, besieged behind a tree by an Indian ensconced behind another. The latter is induced to empty his rifle at the white man's hat exposed on a stick and thus the siege is raised and fresh Indian furnished the vultures. Falstaff and Prince Hal never felt half so merry over a jest as did the hunters of the West over such as this. Davy Crockett's hunting adventures and pioneer campaigning followed and sated the hunger for fun, even as Mark Twain, Bill Arp, and others of that ilk have likewise served this generation.

The light of the twinkling eye, the suggestive intonation of the voice, and certain tricks of the facial muscles are potent auxiliaries of the humorous faculty. Indeed, there is no doubt they are ever premonitory or concurrent symptoms. There is also noticeable about the wit, not precisely a self-abnegation, but he throws his soul unreservedly into the jest. He is void of pretense, is candid and sincere —at least for the time being. All these attributes, and more, may be predicated of Mr. Hardin. He had the faculty of seeing all sides of every subject and detecting its strong as well as its vulnerable points. Especially did he discover readily its weak, absurd, and ludicrous aspects. To him human nature was an open book and he turned its secret pages. His powers of description were of the highest order.

"It was a theory of Ben Hardin's," observes Dr. Rob Morris, "advanced in conversation on this subject, that there is only a certain amount of real wit in human nature. It is impossible, he said, that any large addition shall ever be made to it. Like the gold in the hills, the quantity is limited and it costs dollar for dollar to get it out. He illustrated the theory by referring to a set of comic almanacs before him, showing that by beating the gold almost invisibly thin it may be spread over a vast surface."

Certainly wit and humor have their limitations, beyond which they can not reach. Each wit has his vein, and he must be content with its product and resigned at its ultimate exhaustion. John Phœnix and Artemus Ward each charmed in his own way, but each had doubtless displayed the brightest jewels of his wit before the casket was sealed forever. Yet their transmigrated spirits may sparkle in another generation, as Swinburne hath it, "making mirth for us all." Humor is, like the clouds, ever old and ever new—as old as the race, and as fresh as the last sunset.

Hon. S. S. Cox, an authority in such matters, in "Why we Laugh" places Mr. Hardin among the foremost of legislative humorists:

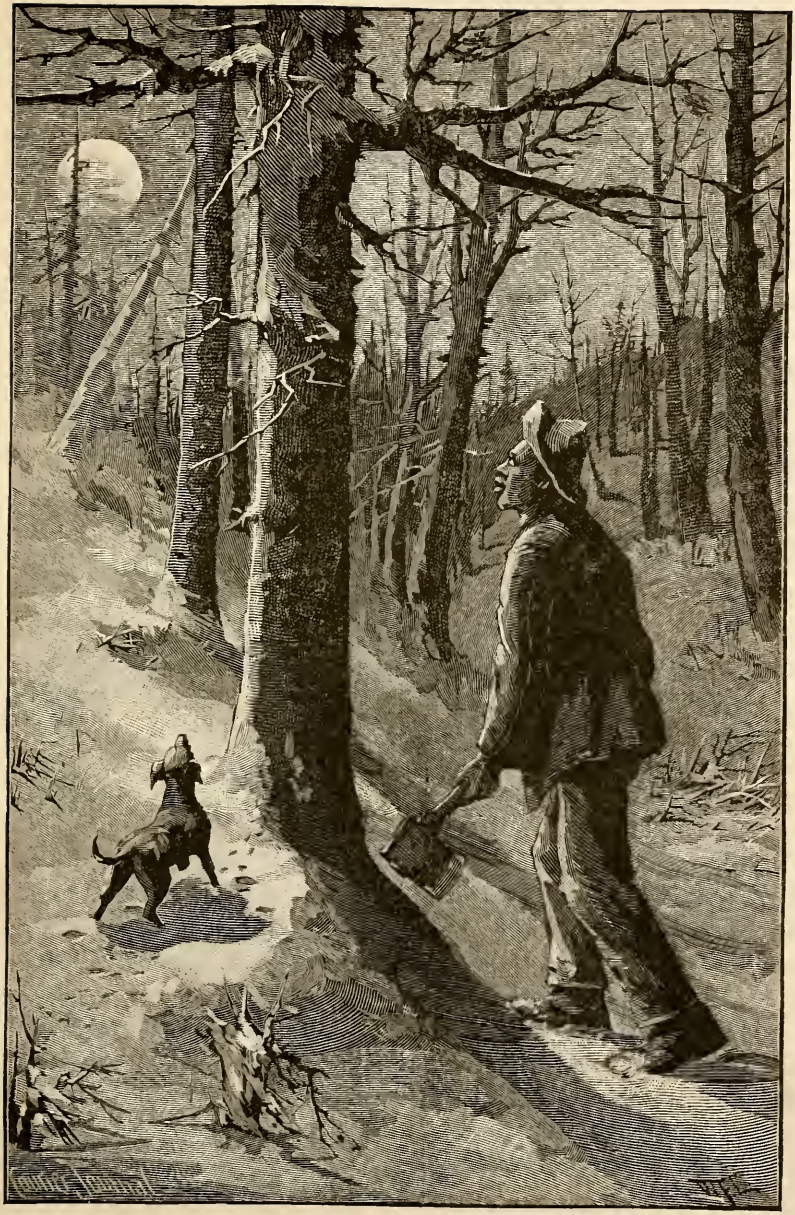
"Who can fill the place of Ben Hardin or Tom Corwin? No one has approached either, unless it be another Kentuckian, J. Proctor Knott, the present member from Bardstown. In him Kentucky gives to us a second edition of Hardin. * * *

"These three members of Congress—Hardin, Corwin, and Knott—are selected," says Cox, "to illustrate this extravagant type of humor. Whence came this inspiration? All three were Kentuckians. It is said of Sheridan that he ripened a witty idea with a glass of port, and if it resulted happily another glass was the reward; like the Kentucky Congressman who took two cocktails before breakfast. When asked why, he said, 'One makes me feel like another fellow, and then I must treat the other fellow.' Is the humor which Kentucky gave, and gives, owing to any particular juice or humor growing out of her soil? Is it drawn from the 'still' air of delightful studies? Governor Corwin once told me that Hardin was the most entertaining man he ever knew. He had an exhaustless fund of anecdote, and with it great natural parts and acquired culture. His celebrity for a quarter of a century as a Southern Whig member of Congress was not altogether owing to his gift of remembering or telling good stories, nor to his *bonhomie*. Now, while Hardin is not to be classed with these characters which I have described, a greater disadvantage attends a sketch of his career as a humorist. He is not reported according to his reputation. His quarter of a century of service fails to show the voluminous fun with which he enlivened and enforced his positions. Here and there we have a few shots from small arms, as when he said meekly that 'if like a sheep I am shorn, unlike a sheep I will make a noise about it.' When denouncing extravagant naval salaries and referring to the naval lobby, he exclaimed, 'Their march may be on the mountain wave, but their home is—in the gallery!' *

The reader is indebted to Dr. Rob Morris for the following expressions of Mr. Hardin on the general subject. Referring to the opinion expressed by Tom Corwin that the worst possible reputation for a politician was a reputation for wit, he said that when he made a *viva-voce* argument, the logic is lost by the audience while they are waiting for the humor. He esteemed wit as a valuable auxiliary to a local fame, as, for instance, that of a lawyer upon his own circuit, but to one aspiring to larger fame it was an injury.†

* Mr. Cox refers to the circumstance that in debate in Congress he had applied the epithet of "snarling Thersites" to a colleague from Massachusetts, as Caleb Cushing in 1835 had retorted the same epithet on Mr. Hardin. General James Wilkinson, in his "Memoirs" in 1816, thus referred to John Randolph, of Roanoke: "Unoffending, absent, and defenseless, I became the favorite theme of this American Thersites."

† "If I were giving advice to a young fellow of talent, with two or three facets to his mind, I would tell him by all means to keep his wit in the background until after he had made a reputation by his more solid qualities." (Autocrat, page 108.)



THE COON HUNT.

Mr. Hardin was fond of the late Charles G. Wintersmith, and admired his legal skill and his accurate and extensive learning. Wintersmith delighted in Hardin's wit, and gave of him the following descriptive quotation:

> "He is a chief who leads his merry sons,
> Full armed with points, antitheses, and puns."

Repartee is the best test of wit, since no time is allowed for premeditation. It nearest approaches inspiration. The following is a specimen of Mr. Hardin's talent in that line: When a member of the constitutional convention, he had a colleague, a young man of fine parts (though suspected of egotism), for whom he had great liking. He will here be called X——. X—— delivered an excellent speech on one occasion, which Mr. Hardin praised. But, said he to the exultant young orator, you mispronounced a word. This was controverted, but a resort to the dictionary showed the criticism just. Shortly afterward, Mr. Hardin made a speech, and during its delivery used the word *leviathan*, with the accent on the *a* in the third syllable. X—— caught the opportunity to correct his censor. "Mr. Hardin," says he, "you corrected my pronunciation the other day, now you must allow me the same privilege." "All right," responded Hardin. "The accent in leviathan," proceeded X——, "is on the *i*, not on the *a*, as you had it." "Ah! Billy," good-humoredly rejoined Hardin, "I fear you put too much emphasis on the 'I.'"

When Mr. Hardin semi-annually attended the terms of the Springfield courts, he always spent one night during his stay with Doctor Palmer, who had married his daughter Emily, and lived near Springfield. This habit he continued after his daughter's death, and after her place had been filled by a most excellent lady, daughter of the late Marshall Key. Mr. Key was visiting his daughter during one of the terms of court, and was there one evening when a message was received by Mrs. Palmer stating that Mr. Hardin would shortly be out to spend the night. Now, it so happened that the new constitution had just been framed and adopted. The controversy engendered by it in many quarters was exceedingly acrimonious. Mr. Key had held the appointment of clerk under the old constitution, which office he lost by the abrogation of that instrument. This he regarded a personal grievance—and his feelings toward the new constitution and all who had favored it were of the most implacable nature. It was impossible for him to discuss it, or even refer to it, without the most

violent exhibition of bad temper. Mr. Hardin had not only favored the new constitution, but had been one of its most active promoters. He regarded his efforts in framing and securing the adoption of that instrument as the crowning triumph of his career. The prospect of Mr. Hardin and her father encountering each other filled Mrs. Palmer with apprehension. Hardin and Key were both old men, and with each this issue about the new constitution was a hobby. How to keep that subject out of sight, while Mr. Hardin remained, was the question. Mrs. Palmer communicated her fears to her husband, and enjoined upon him to exert himself to prevent *constitutional* discussion. Mr. Hardin arrived during the evening, and he and Mr. Key, under the supervision of their host, for a time got on very handsomely. Both were good talkers and in conversational frame, and found little difficulty in comparing and harmonizing their views on various topics. Supper was announced at this auspicious juncture. Mrs. Palmer's apprehensions were not only lulled, but she began to enjoy her escape from the disagreeable consequences that must have inevitably followed the introduction of the tabooed topic. But her security proved false and delusive.

The evening meal was not more than fairly begun before Mr. Key opened up on (what he styled) "*so-called*" constitutional reform. The new constitution he asserted was a fraud, a sham, a disgrace, an outrage, a swindle, an abomination, and the sum of all iniquities. Not only this, but its framers were a set of demagogues, tricksters, liars, scoundrels, jacobins, radicals, anarchists—and all who favored it were either knaves or fools, unworthy to enjoy the blessings of free government. This, and much more to the same effect and like tenor, did the old gentleman heatedly launch forth upon the "bastard thing called a new constitution." Dr. Palmer was embarrassed, and his good wife filled with consternation. After all precautions, the dreaded catastrophe had occurred, and all that could be done was to witness its progress and event. Mr. Hardin, to whom Mr. Key had addressed his remarks, listened very attentively, but very quietly, till the phillipic ended. Then, with a twinkle in his eye, "Mr. Key," said he, "if I rightly apprehend the tenor of your remarks, you seem to be opposed to the new constitution." This concluded the subject, to the infinite relief of the Palmer household.

On one occasion, when Mr. Hardin was engaged in a trial in the Meade circuit court, in which he took little interest, N———, a pushing young lawyer, whose talent Hardin held in light esteem, opposed

him. The evidence completed, Hardin proposed to let the jury take the case without argument. N—— objected. Hardin urged that the issue was simple, the law plain, and the evidence without conflict, so that neither side could hope to profit by argument. N—— still insisted on addressing the jury. The court, who had not heard this colloquy between counsel, ordered the argument to begin. "If it please your honor," said Hardin, "I did not wish to argue this case. It is unnecessary, and I so said to counsel for the other side; but it seems that there is no way to get the load out of a small-bore rifle except to shoot it out."

On another occasion he was defending a young man of excellent family, charged with horse stealing, a charge always more difficult to meet in Kentucky than willful murder. His client admitted his guilt to his attorney, and witnesses were at hand to sustain the prosecution. The defendant was in jail. By dint of management a continuance was obtained, though not without difficulty. An effort to reduce bail, after a contest, was successful. The bail was then given. The defendant at that point asked advice as to what to do next. "Well," says Hardin, "your case is continued until next term, the court has reduced your bail, and you have now given lawful bail—that releases you—and unless you are a greater fool than I think you are, the next thing you will do will be to give *leg* bail."

The power of invective and sarcasm is often allied to wit and humor. Of the former, Mr. Hardin was master. "He was much more sarcastic than witty," writes one well qualified to judge, "and his denunciations were as fire applied to the flesh. Indeed, they were often so unmeasured as to give one the idea that he was being moved by personal vindictiveness." He was also an adept in the art of ridicule. His irony was finished and biting. Specimens of his invective, sarcasm, ridicule, and irony abound in all his speeches. None are finer than those found in his speech in the Owsley controversy embraced in this volume.

In Bynum against Wintersmith, a case in Meade county, Governor Helm was for plaintiff, Hardin for defendant. The facts were these: Some forty years ago a Yankee named Bynum visited Kentucky, introducing the silk worm and selling the white mulberry tree (*morus multicaulis*), the leaves of which furnished the worm its raw material. Wintersmith became a purchaser of some worms and trees, executing his note for the price. The trees proved defective and died, and payment of the note was refused. Hence, the law-suit. Mr. Hardin

was in his element, having a natural antipathy to all new-fangled things, regarding them as devices to swindle the public. Improved stock, then first being introduced into the State, was a pet aversion with him. In course of argument he said:

"I have practiced law for forty years in Kentucky. During that time I have had abundant opportunity to learn and appreciate the character of its people. I know them and know them well—from the inmate of the hut to the denizen of the State capital. There never lived a people more honest and honorable, who were more chivalric or braver, more patriotic or more hospitable, kinder or truer. They are sensible and intelligent, but a people never existed on earth more easily humbugged. No matter what the imposture, they are always ready to embrace it and be deceived. They seem absolutely fond of it. Experience teaches them nothing. So they are humbugged with Durham cattle, humbugged with Berkshire hogs, humbugged with Brandeth's pills, and now they allow themselves to be humbugged with *morus multicaulis!*

"I know it is claimed that Berkshire hogs are an improvement on the old stock, but I don't believe it. Mr. Helm has some Berkshires of which he boasts. The last time I was at his house my little grandson, Hardin, said to me: 'Grandpa, have you seen any of our new hogs?' I told him I had not. He insisted on taking me to see them. I happened out just at feeding time. Mr. Helm's negro man Vincent was administering cooked mush with a silver spoon!" *

The reader is indebted for an account of the incident that follows, to the pen of one whose name and talents are associated with the history of the State. †

It is proper to premise that Mr. Hardin was intolerant of all pretenders, especially if the pretense was in the legal profession:

"He nearly always arrived at Hardinsburg on Monday, the first day of the term, about 11:00 A. M. I remember, on a certain occasion, as soon as court opened, several young gentlemen (who had just obtained license) were sworn in as attorneys, and, with the usual modesty (?) of young lawyers, they disposed themselves in the bar chairs very comfortably. Shortly afterward Mr. Hardin entered. He bowed to the court, who ordered the sheriff to furnish him a chair, the bar chairs all being occupied, the young gentlemen aforenamed maintaining their rights by remaining seated, and not one offering to surrender to Mr. Hardin. 'No, your honor,' he replied; 'I will pick one by the time I need it.'

"On calling the first case on the Commonwealth's docket, Mr. Hardin announced himself for defendant, and that he was ready for trial. The trial proceeded.

* For this incident the author is indebted to the late Rev. S. L. Helm, Stephensport.
† Colonel Alfred Allen.

"He paid no attention to the testimony, and it was soon ready for argument. He arose, and, turning to the court, waved his long arm in the direction of the young hopefuls, all of whom had abandoned other callings, as he knew, and said: 'Are all these lawyers I see before me, your honor? If so, to what is the country coming? Ruin and starvation, for no land, even were it the fertile valley of the Nile, could support such a redundant population of such lawyers, or survive so sudden a loss of constables, doctors, bricklayers, and tailors as we have here before us. It seems the whole world is running to the bar. The doctor lays down his syringe and vegetable pills, and he rushes to the bar. (Up sprung Dr. S——, and vanished from the court-house forever.) The constable jumps off his horse, lays downs his saddle-bags and ninepenny executions, and he levies on the bar. (At the word constable, Jesse M——became *non est inventus*.) The bricklayer lays down his trowel and his hod of mortar, and he plumbs his upright way to the bar. (Whereupon Mr. K—— assumes a perpendicular, and solemnly and sternly stalks out of the court room, saying to the writer, who met him at the door, that 'old Ben Hardin had made a most ungentlemanly attack on him, for which he should answer on the field of honor except for his—Hardin's—old age.') The tailor and dancing master lays down his thimble and goose, his fiddle and his bow, and dances up to the bar. (Thereupon C—— dances out of the court-house.) And so, if your honor please, they all rush to the bar.' At this point, discovering that the bar had lost its fresh tenants, Mr. Hardin proceeded to select a seat, forgetting to say a word for his client in the case on trial."

The following graphic sketch, written by a friend and cotemporary of Mr. Hardin,* is properly inserted in this connection. It not only abounds in racy humor, but it also affords an apt illustration of his skill as a practitioner:

"Mr. Hardin and myself were once defending a man named Alexander Creason, in the Meade Circuit Court, for killing one Troutman at a shooting-match. Troutman had been provoking a difficulty all day with Creason, and at last Troutman, with a stick in hand, approached Creason, saying, 'I intend to give you a beating,' raising his stick. At this Creason took his gun from his shoulder, struck Troutman on the head with the barrel, and killed him. Creason was indicted for the killing, and on the trial one Lawrence Greer (whom Mr. Hardin familiarly called Larry) was sworn as a witness for the Commonwealth, who testified that he heard Creason say a short time before the killing that if Troutman crossed his path he intended to kill him. A gentleman in the court room came to us and said, 'You can prove by two witnesses now in the court room that Lawrence Greer, the witness, told the father of the deceased, at a certain time and place named, that he would make the proof above, at the trial, for a gallon of whisky. We had

* Judge John C. Walker, of Louisville.

the witnesses immediately summoned. Mr. Hardin called Lawrence Greer back to the witness stand; asked him if he did promise the deceased's father, at the time and place referred to, that he would make that proof for a gallon of whisky. He said he had not. Mr. Hardin said to him, 'Larry, you have been a great sinner and are getting old, and I admonish you, if you did say so, admit it; it is a grave affair.' He still said he did not. Mr. Hardin then asked him if he did not get the gallon of whisky from Mr. Troutman. He said yes, he got a gallon of whisky from Mr. Troutman. 'Did you pay him for it?' He answered, 'That is none of your business.' Mr. Hardin said he wanted an answer. The court told him to answer the question. Witness said he had not. We proved conclusively by both witnesses that Greer had so said to Mr. Troutman, the father, and had gotten the whisky.

"When Mr. Hardin came to argue the case he turned to Greer and said: 'Larry, you and I have known each other a long time. You lived in Nelson county for many years, in which county I yet live. You have done many things you ought not to have done, and left undone many you ought to have done, many, very many. You have been the very worst of sinners. You and I know who took and carried away old Mrs. A.'s geese; these people here don't know; I don't intend to tell them, and I know you won't! You and I, Larry, know who took and carried away Mr. B.'s hemp one night; no one here knows one word about it. Don't become alarmed, Larry, I am not going to tell them, and I know you won't! You and I know whose shoe fit the track, exactly, that went away from old Mr. V.'s barn, when it was burned; these people here don't know—perhaps never heard of it; I don't intend to tell them, and it is very sure you won't; yes, I know you won't! Larry, it has been a fact in every age that some man had to be the worst man living. A few years ago, when that inquiry was made, everybody was ready to say Cy Hultz, but Cy has been dead and gone for several years, and some one has had to take his place. I will not say, Larry, who that man is, but I will say this: If I knew that God Almighty had issued His search-warrant and placed it in the hands of the devil and sent him to hunt for and find that man, and I knew he was out on that mission, and I was to meet you on the road, I would tell you to hide—hide quick, or you will be taken!'"

Hon. Joseph R. Underwood, late of Warren county, was eminent throughout a long career, both as lawyer, jurist, and statesman. He and Mr. Hardin were in the Legislature together in the third decade of the century.

Underwood, although a man of fine abilities, was more wedded to form than substance, and was rarely satisfied with the phraseology of any proposition not drawn by himself. The House had grown weary of the constantly-recurring verbal discussions caused by Mr. Under-

wood's amendments. On an occasion when one of these had just been presented, Mr. Hardin arose and said: "Mr. Speaker, I consider it one of God's mercies that the gentleman from Warren was not upon the earth in the days of our Saviour. If he had been, he would, infallibly, have moved an amendment to the Lord's prayer, which, if adopted, might have led to the damnation of a world."

Aaron Harding, of Danville, was a man of decided talent. He was for two terms a member of Congress. He was a good lawyer, and of most exemplary private character. As an orator he was earnest, and at times not only solemn, but sepulchrally so in manner. He and Hardin were employed on opposite sides of a slander suit, in Green county, having its origin in defendant's charge that plaintiff had stolen turkeys. The defendant justified.

Aaron was more funereal than usual, his speech being characterized by ghostly seriousness. In closing the argument, Mr. Hardin said he had encountered the best lawyers of Kentucky for a generation past; he had, in New Orleans and Mississippi, met the strongest legal talent of the South; in the Supreme Court at Washington he had encountered lawyers of national reputation, and he had, on all those occasions, survived the conflict. But as to whether he would outlive the present struggle he felt uncertain, as it was the first time he had ever had to contend with an attorney from the other world.

In the same vein is the following: A wealthy landlord had sued out a distress warrant for two dollars and twenty-five cents, balance of rent owing by a poor widow, and had levied on and sold her last horse and last milch cow for that amount. She employed Mr. Hardin, who sued for five hundred dollars damages for excessive levy. In closing his argument he said: "It is fortunate, gentlemen of the jury, very fortunate, for mankind that this grasping landlord did not live in the days of Herod. If he had, I do not doubt but that he would have sued out a distress warrant against Joseph and Mary, and levied on the ass that bore them to Egypt, and thus have caused the infant Saviour to fall into the hands of that bloody tetrarch." *

Mr. Hardin was fond of the classics. At school he had studied Greek and Latin, though what proficiency he had made in either is not known, and matters little. Mr. Thomas F. Marshall once asserted that Hardin had acquired his familiarity with the classics through English translations. Assuming that he only knew them

*"How did the case result?" inquired the author of the person relating the above. "Oh," said he, "it took the jury considerably less than five minutes to bring in a verdict for the widow for five hundred dollars."

through that medium, his attainments are not thereby discounted. Emerson and the hyper-critical Kentuckian evidently held different views of this subject:

"The respectable and sometimes excellent translations of Bohn's Library," quoth the Concord philosopher, "have done for literature what railroads have done for internal intercourse. I do not hesitate to read all the books I have named, and all good books in translations. What is really best in any book is translatable—any real insight or broad human sentiment. Nay, I observe that, in our Bible, and other books of lofty moral tone, it seems easy and inevitable to render the rythm and music of the original into phrases of equal melody. The Italians have a fling at translators—*i traditori traduttori;* but I thank them. I rarely read any Greek, Latin, German, Italian, sometimes not a French book, in the original, which I can procure in a good version. I like to be beholden to the great metropolitan English speech, the sea which receives tributaries from every region under heaven. I should as soon think of swimming across Charles river when I wish to go to Boston, as of reading all of my books in originals, when I have them rendered for me in my mother tongue."

That Mr. Hardin had assimilated and made his own the great bulk of ancient literature is avouched, not only by his constant use of it, but still more by his remarkable ability to make his references to it interesting to the most unlettered hearer. He once defended a man charged with the murder of his own slave—death having resulted from cruel treatment. The defense set up was that death resulted from natural causes. The prosecution called a young physician as a witness, who had seen the deceased a week before death, and he detailed the result of the examination then made. The witness was a handsome young fellow, of good address, and impressed the jury favorably. To parry this effect, Mr. Hardin made a cross-examination, not specially relevant to the case. At length, when the medical man, in replying to a question, inadvertently said the deceased "rode away on a *female* side-saddle," he was allowed to "stand by." In dealing with this witness in his speech to the jury, Mr. Hardin created no little amusement by expatiating on his good looks and handsome dress. His object in this was easily fathomed. Continuing the topic, "There was once at Athens," he said, "as we learn from Ovid, a youth named Narcissus, distinguished for having the most remarkable beauty ever known. But he had long been unconscious of it, until one day he caught sight of his own reflection in the waters of a pool—whereupon he fell violently in love with himself. This strange infatuation

clung to him until he became sick and ultimately pined away and died. I am expecting, on the arrival of every stage, to receive a letter informing me that Tom Marshall has perished from the same cause, and (turning to the witness) I advise you, young man, to beware of a like fate."

There are but few chapters in this volume that do not contain anecdote or incident illustrating his humorous traits. Not only was his reputation in this respect established during his career, but it was universally recognized and acknowledged. The comic almanac-maker of his day made Mr. Hardin the unwilling vehicle for communicating jokes rather broader than he ever indulged in the most unreserved moments. But Ben Hardin's name gave them currency. In "Flush Times of Alabama and Mississippi," the author (Mr. Baldwin) has Cave Burton, one of his characters, to quote Mr. Hardin's advice, on an occasion when Cave addressed the jury in the "Whistler" breach of promise case. "Says Ben, 'Cave, tap them gently and milk them of their brine easy. Let the pathetics sink into 'em like a spring shower.'" *

* See Appendix, Note D.

CHAPTER XXII.

THE WILKINSON TRIAL.

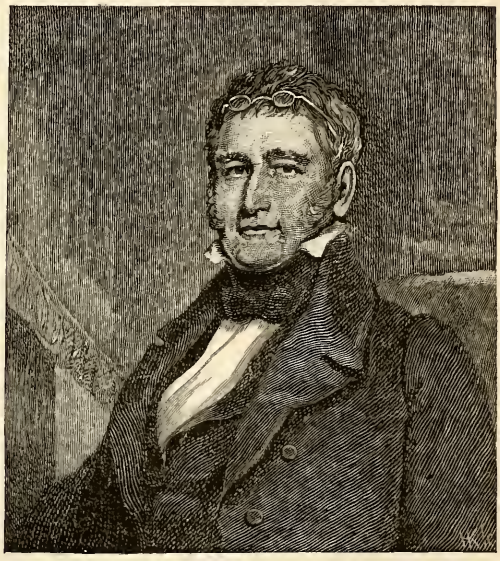
THE most noted trial in which Mr. Hardin took part was that of the Wilkinsons—one more celebrated on account of the array of counsel than any that ever occurred in Kentucky. In 1838 Edward Wilkinson was a prominent lawyer of Mississippi, where he had been circuit judge and held other important posts. He had addressed and was engaged to be married to Miss Eliza Crozier, an accomplished young lady of Bardstown, belonging to one of its oldest and best families. Her mother was sister to Colonel Hinds, distinguished in Kentucky annals for his military services. The wedding was to have occurred in December, 1838. It was a social event of no small proportions to Nelson county society, and its approach aroused general expectation. Shortly in advance of the appointed day Judge Wilkinson reached Louisville, accompanied by his brother, Dr. Wilkinson, and his friend Mr. Murdaugh, a young lawyer, both also of Mississippi. The interim at Louisville was devoted to preparation. Dr. Wilkinson had engaged with one Redding, a merchant tailor, for a suit of clothes. On the Saturday preceding the Tuesday for which the wedding was fixed, Dr. Wilkinson called alone at his tailor's and received the coat, ordering the rest of his outfit sent to his hotel. On meeting his brother and Murdaugh, they disapproved the fitting and style of the coat. The party then adjourned to Redding's shop, where, after some bad-humored discussion, the coat was returned to its manufacturer. Redding, irritated by the discontent of his customer, and attributing it to Judge Wilkinson, indulged a disrespectful remark toward the latter, which caused him to assault the tailor with an iron poker. The affray that ensued was quickly transferred from the shop to the street, where it was shortly arrested. Bowie-knives were displayed by the Mississippians, but not used, nor was any one injured in the melee. The combatants separated, Wilkinson and his friends returning to their hotel, while Redding went in quest of an officer.

About supper time Redding went to the hotel (the Galt House) under pretext of obtaining the names of the parties, in order to pro-

cure a writ for their arrest. As a number of his special friends happened to congregate about this time in the hotel bar-room, there was strong ground for the theory, afterward successfully maintained, that a conspiracy had been formed to do violence to the Wilkinson party. Judge Wilkinson, casually entering the bar-room, was assaulted by Redding with violent and insulting language. Retreating to his room, he soon returned, accompanied by his brother and Murdaugh. On this, Redding returned to the bar-room, and accosted Murdaugh in an offensive manner, accusing him of having drawn a bowie-knife on him at the previous difficulty. This Murdaugh denied with an epithet, and drew a spanish dirk-knife, telling Redding to stand off, swearing he would kill the first man who laid hands on him. One Meeks, at this point, seized the wrist of his knife hand and struck him with a cowhide, saying, "You are the d——d little rascal." Several persons then rushed up, and one Rothwell struck Murdaugh over the head with a hickory club, or stick, inflicting a painful wound. Murdaugh, however, gave Meeks his undivided attention, while the latter was industrious with the cowhide. Murdaugh changed his knife to his left hand, and, thus using it, caused Meeks to relinquish his right and retreat. With his right hand free, he made short work of Meeks, who died immediately from his wounds. The witnesses attributed one of his wounds to Judge Wilkinson. Some one gave Judge Wilkinson a stab; but the chief punishment of the Southerners fell upon Dr. Wilkinson, who seems to have given least offense. He was knocked down and beaten until almost senseless by Holmes and others. Rothwell quit Murdaugh and attacked the Doctor, or, at least, in the confusion, appeared to do so, whereupon Judge Wilkinson fatally cut Rothwell, and inflicted a slight wound on Holmes. The Wilkinson party then made good their retreat, and the affair ended. Meeks and Rothwell lost their lives. The other wounds inflicted on the various combatants were not serious in their results. Rothwell was brother-in-law to Redding. Meeks was unacquainted with Redding, and why he foolishly took part was never explained. The Wilkinsons and Murdaugh were arrested and committed to jail. Excitement ran high, and apprehensions of lynching existed. A remark of Judge Wilkinson in the outset of the fatal tragedy perhaps enraged the populace more than the bloodshed. When Redding first abusively accosted him, he retorted that he would not quarrel or fight with "a man of his profession." The relative number, weight, and influence of the artisan class in a city like Louisville has undergone

great diminution in the last forty or fifty years. Within that period machinery has revolutionized the pursuits of mankind. In 1838, instead of the mammoth clothing houses found in every city, there were numerous and extensive shops, employing great numbers of workmen, that furnished, as ordered, raiment for the public. Other pursuits were likewise thus filled. Judge Wilkinson had insulted the entire guild of labor, and its voice was public sentiment. But the excitement passed without demonstration.

An examining trial was had at Louisville, Mr. Hardin representing the prosecution, Judge Rowan the defense. The night of the homicide Redding had put a messenger on a fleet horse and sent him to Bardstown, forty miles away, to engage Mr. Hardin's services for the prosecution. The latter came to Louisville and stopped at the Galt House the day following. Dr. C. C. Graham says he expressed to him privately a desire to defend rather than prosecute, and said that if the prisoner wished to employ him he would decline the offered retainer of the prosecution. Judge Wilkinson being informed of this offer, said that he would engage Mr. Hardin if Judge Rowan needed his services. When Dr. Graham communicated this to Mr. Hardin, the latter responded, "It is not worth while to see Judge Rowan; he never needed my services."



JUDGE ROWAN.

The examining trial was marked by great excitement. Public feeling was at fever heat, which the zeal of counsel still further augmented. In argument Judge Rowan was cool, collected, astute, and exhaustless in resources, while Mr. Hardin in some of his appeals was volcanic. Time after time would Judge Rowan interrupt him with objections and counter authorities. Mr. Hardin (the interruption ended) broke away like a torrent checked awhile only to rush on more furi-

ously. Murdaugh once ventured an interruption. "Be quiet, little chicken," roared Mr. Hardin; "I will come to you directly, and when I do I will not leave a feather of you."

The examining trial resulted in committing Judge Wilkinson and Murdaugh to answer the charge of murder.

Subsequently indictments were found accusing all three of the murder of Rothwell and Meeks. They were admitted to bail which was given. They petitioned the Legislature for a change of venue, that department alone exercising this prerogative at that time. In the January following, the venue was changed from Jefferson to Mercer circuit court, and the trial fixed for March following. In the meantime, the marriage so rudely interrupted was quietly celebrated.

Mr. Hardin, in his argument on the trial, sarcastically observed that Mr. Prentiss spoke of Judge Wilkinson's engagement and marriage as a special honor conferred by the latter on the State. It will not escape the professional eye that the Kentucky woman's uncalculating devotion at that juncture was an auspicious circumstance for the defense. Immediately after the tragedy Mr. Hardin was employed by Redding to assist in the prosecution. He appeared at the examining trial, and by his zeal so stirred public feeling that a change of venue was inevitable. That change lost the prosecution its strongest ally, public sentiment.

Referring to Mr. Hardin's speech before the examining court, Judge Rowan said:

"But let me tell him if he hopes to gain anything by exciting the passions of the jury he miscalculates. He is not now amid the fervors which this case excited where it happened. He can not here produce the volume of passion which the false and erroneous misrepresentations of the conspirators produced there, and to the propagation and extension of which he, by the force of his acknowledged talents before the examining court, contributed. Here he can not, as there he did, to a considerable extent, excite the mechanics and working classes against the gentlemen slave-holders and cotton planters."

In Mercer county, when the trial came on, public feeling was on the side of the defense.

The case was called for trial at Harrodsburg by Judge Bridges, on the day fixed by the legislative act, March 4, 1839. On the day following a postponement was granted the prosecution until the 11th.

On that day the trial began. The prosecution was represented by Edward I. Bullock, prosecuting attorney, and Mr. Hardin. For

defense appeared John Rowan, S. S. Prentiss, Colonel Robertson, Samuel Davis, John B. Thompson, Charles M. Cunningham, James Taylor, and C. M. Wickliffe. Prentiss was not present when the case was called for trial, but was expected from Washington where, as a member, he had attended the session of Congress then just adjourned. During this delay "great was Wilkinson's anxiety," observed Prentiss' biographer, "the more especially as Ben Hardin, the Achilles of the Kentucky bar, had been engaged to prosecute. He feared Hardin's power over a Kentucky jury." Prentiss only arrived in court after the jury was completed—but his fame had preceded him. Crowds lined the streets to catch a glimpse of him. When Hardin saw him alight from the hack in which he came he remarked: "I know now what I've got to meet."

The trial occupied five days—the evidence being completed in three. Mr. Hardin examined the witnesses for the prosecution and Colonel Robertson for the defense, except a few examined by Judge Rowan. Save a single objection at the beginning of the trial by Colonel Robertson, to a part of Redding's testimony, its progress was notably free from those interruptions whereby zealous counsel but too frequently and needlessly protract trials. Witnesses were passed back and forth—examined, cross-examined, re examined, and re-cross-examined—without objection. The counsel on either side manifested the greatest equanimity of temper on all occasions during the trial. The theory of defense in evidence and argument was that Redding and others had formed a conspiracy to slay or injure the accused, that the attack at the Galt House was the result of that conspiracy; and that defendants acted in self-defense. The prosecution denied this conspiracy and insisted that defendants had themselves conspired. The result of the evidence was manifestly in favor of the theory of the defense.

The argument was conducted in the following order: Mr. Bullock opened for the prosecution; he was followed by Messrs. Robertson, Prentiss, and Thompson, in the order named. Mr. Hardin next spoke; Judge Rowan followed, and Mr. Bullock concluded. Bullock was a young man "much respected for his private worth, as well as his promising professional abilities." He made a sensible speech without effort at display. Colonel Robertson was sixty years of age, or more, a native of Virginia, and of polished manners. His oratory, it was said, partook more of studied propriety than fervid eloquence. Of that brilliant child of genius, Sergeant S. Prentiss, so much has been said, and so extravagantly, that it is impossible to give the pict

of it. His speech on this trial was one of the happiest forensic efforts of one of the most brilliant orators that has lived in any age. John B. Thompson was a bright and genial man, then in the outset of a career that led to the United States Senate, but still fell short of what his talents and genius might have achieved.

Judge Rowan, in the course of his argument, having stated that his colleagues, who had preceded him, had "reaped the field," said: "I feel that I have been irregular and discursive, much more so than had been my wont in years gone by, and I ascribe it in some degree to the causes I have named. You, perhaps, may ascribe it to the growing weakness of senility, and to guard against further exposure of weakness, from that or any other cause, this shall be my last forensic effort." And so it was. Messrs. Robertson, Prentiss, and Rowan, all gave Mr. Hardin special consideration in their speeches. Judge Rowan, indeed, referred to the facts of the case only incidentally—his whole effort being devoted to an arraignment of Mr. Hardin for engaging as prosecuting counsel. Colonel Robertson, in concluding his argument, thus referred to Mr. Hardin:

"The distinguished gentleman who aids in this prosecution has furnished us with some proof of the corroding influence upon the human heart caused by a long indulgence in prosecution for alleged crimes. I am sure that nature gave him a kind and generous disposition, and that he is still possessed of these amiable qualities. I do not doubt but he has so long lent his aid in prosecutions of this kind that he has brought himself 'to look on blood and carnage with composure.' He will doubtless make, as he has heretofore made, a bold and mighty effort to convict the accused, though in my judgment such conviction would be against both the law and evidence.

"Neither the shrieks nor tears of the lovely Andromache, nor the groans and lamentations of the aged Priam, can stay him in his fierce pursuit; the wife and the father sink into nothingness when compared with the glittering fee that awaits his efforts; he has bargained for conviction, and he goes for his bond. Give it to him, gentlemen. Tell him to take his pound of flesh, but tell him at the same time that if in cutting it he spills one drop of blood, Shylock himself shall be the only victim of the law."

The speaker refers to the fact developed in the evidence that Mr. Hardin was paid for his services a fee of one thousand dollars by Redding. Mr. Prentiss also deemed it worth while to allude to this fee in his mention of Mr. Hardin:

"One of the ablest lawyers of your country, or of any country, has been employed to conduct the private part of this prosecution; employed,

not by the Commonwealth, but by the real murderer; him whose forehead I intend, before I am done, to brand with the mark of Cain, that in after life all may know and all may shun him. The money of the prosecutor has purchased the talent of the advocate, and the contract is, that blood shall be exchanged for gold. The learned and distinguished gentleman to whom I allude, and who sits before me, well may excite the apprehension of the most innocent. If rumor speak truth he has character sufficient, even though without ability, and ability sufficient, even without character, to crush the victims of his purchased wrath.

"Let not the learned counsel who conducts the private part of this prosecution act the necromancer with you, as he did with the populace in the city of Louisville, when he raised a tempest which his own wizard hand could not have controlled. Well may he exclaim in reference to that act, like the foul spirit in Manfred:

> '"I am the rider of the wind,
> The stirrer of the storm;
> The hurricane I left behind
> Is yet with lightning warm.'"

As a fair specimen of Mr. Prentiss' oratory, and of the felicity of his appeals to the jury, and especially that most susceptible of all auditories—a Kentucky jury—the following extract is given:

"But Judge Wilkinson had no right to interfere in defense of his brother; so says the Commonwealth's attorney. Go, gentlemen, and ask your mothers and sisters whether that be law. I refer you to no musty tomes, but to the living volumes of nature. What! a man not permitted to defend his brother against conspirators, against assassins, who are crushing out the very life of their bruised and powerless victim? Why, he who would shape his conduct by such a principle does not deserve to have a brother or a friend. To fight for self is but the result of a natural instinct, which we have in common with the brutes. To defend those who are dear to us is the highest exercise of the principles of self-defense. It nourishes all the noblest social qualities, and constitutes the germ of patriotism itself.

"Why is the step of the Kentuckian free as that of the bounding deer; firm, manly, and confident as that of the McGregor, when his foot is on the heather of his native hills, and his eye on the peak of Ben Lomond? It is because he feels independent and proud; independent in the knowledge of his rights, and proud in the generous consciousness of ability and courage to defend them, not only in his own person, but in the persons of those who are dear to him. It was not the blood that would desert a brother or friend which swelled the hearts of our fathers of the 'olden time,' when in defense of those they loved, they sought the red savage through all the fastness of his native forest. It was not such blood that was poured out, free as a gushing

torrent, upon the dark banks of the melancholy Raisin, when all Kentucky manned her warrior sires. They were as bold and true as ever fought beneath a plume. The Roncesvalles pass, where fell before the opposing lance the harnessed chivalry of Spain, looked not upon a braver or better band."

Said one who witnessed the trial, the whole interest centered in Prentiss and Hardin. Large numbers attended from the surrounding counties. The court-house was crowded during their arguments with the beauty and intelligence of the State. But the tide all flowed toward the defendants. If anything were lacking to their acquittal, the oratory of Prentiss more than supplied it. Said an eye-witness: "Great excitement prevailed during the trial. Feeling was strong both ways. But Prentiss' speech melted things down wonderfully."

The prosecution had been literally overwhelmed before Mr. Hardin came to speak. He did not entirely conceal the consciousness of this fact, yet in the report of his speech unmistakable evidences of his genius and power appear. During the adjournments of court, and even the night preceding his address to the jury, Prentiss had been at the card table and indulging in deep dissipation. On the contrary, all his odds and ends of time Mr. Hardin devoted to laborious research and preparation. His speech occupied parts of two days. He slept none the intervening night—(as one described it) through the long hours "like a Corypheus he worked with the facts and law of his case, consulting authorities, arranging his matter, leaving its dress alone for the sure inspiration of the moment." The reporter found it "necessary" to "compress his exhaustive and masterly speech of five hours. The "compressing" process denuded it of many of those idiomatic phrases and witty sallies that lent it pungency and charm. Others who spoke in the trial, notably Mr. Prentiss, afterward carefully revised the report of their own speeches. Mr. Hardin declined making any revision. He complained of the great injustice done him in the report. The following is the speech as reported:

"I shall, gentlemen, very humbly and very cordially congratulate you upon having this case brought so near a close. It has already been protracted beyond the usual limits of criminal trials by the extraordinary ingenuity and uncommon array of talent enlisted on the occasion. The gentlemen on the opposite side have felicitated you upon the politeness of your patience, and, among others, I too return you my thanks for your attention.

"I little expected when I engaged in this cause in Louisville last winter that I should ever have to address you on the subject. Although I have

been fifty years practicing at the Kentucky bar, this is the first time I ever had to address a jury in this place, and I can not help feeling that I am as much a stranger here as any gentleman who has addressed you. I shall, however, in speaking to you, apply myself to an exposition of the facts and of the law bearing upon them; and whatever may be your feelings, you will, I am sure, keep in mind that you are bound to exercise your reason, and that you owe a duty of no ordinary responsibility to yourselves, your characters, and your country. That duty is a sacred trust reposed in you which you can not weigh lightly without injury to yourselves as well as wrong to others. Nor must you surrender up your reason to your passions, and allow yourselves to be carried away by the shouts of applause from a fashionable audience, as if you were in a theater where a Junius Brutus Booth and a Miss Ellen Tree exhibit the practiced arts of controlling the feelings and successfully eliciting the noisy plaudits of excitement. This is not a theater; this trial is not a farce; nor are you seated on those benches for amusement. This, gentlemen, is a solemn court of justice, a solemn tribunal in which your judge, presiding with becoming dignity, represents the majesty of the law, and in which you are expected to deliberate with becoming gravity upon circumstances of awful import. The appalling death of two fellow-creatures is the occasion of your being here assembled, and the guilt or innocence of those at whose hands they fell is the object of your solemn investigation.

"Even though I knew I should have to address a jury of strangers, and an assemblage to whom I am personally unknown, I little anticipated that I should have to make a speech to any other audience than that usually to be found in our halls of justice. But my friend, Colonel Robertson, whose youth and warmth, in that way, urge him to precedence, has taken me by surprise, and placed before me a galaxy of beauty and fashion, which might well deprive me of my presence of mind if I were not fortified with less of the ardor of youth in my veins than himself, and were I not less practiced in those graces of person and manners which he can so successfully play off to woo and win their fascinating smiles.

"By law, and in conformity with the original institutions upon which all law is founded, this trial was to have taken place where the occasion of it occurred—in the county of Jefferson. The Legislature, in its wisdom, has thought fit to change the venue from Jefferson to Mercer county; but why, I am unable to say. For even Colonel Robertson, the very able counsel for the defense, has admitted that, although for a time great excitement existed in Louisville, yet, after the investigation at the examining court, that excitement was altogether allayed. In this country experience has always taught us that when a change of venue is sought, the object is not to obtain justice, but to evade it. The object is to thwart and embarrass the prosecution and multiply the chances of eluding the responsibility of the law. How is this effected? Is it not by a removal to some place esteemed favorable to the

accused, by a removal so distant from the scene of action that the expense and inconvenience render it probable that but few of the witnesses can attend? By a removal to where witnesses of a character dubious, if not infamous, where known, may find credit because they are unknown? Here we are some seventy or eighty miles from the stage on which this tragedy was acted, yet we are asked why we did not bring the stick and the cowhide, and Bill Holmes, the pilot, as if we would be afraid to produce them were they within our reach. I would ask the opposite side, in my turn, why gentlemen have brought us eighty miles from the scene of action where we could have elicited the truth in every particular? I listened yesterday with great pleasure to Colonel Robertson, whose speech was very good, and evinced as much of the fire of youth as the flowers of rhetoric; but I can not say it was much calculated to convince the understanding that the 'worse can be made to appear the better cause.'

"I also listened with great pleasure to Mr. Prentiss, who addressed you yesterday, and in part to-day, and I must say that, although there were in his speech some things which I could not approve and many deductions which I could not admit, yet, on the whole, it was an oratorical effort which I could not help admiring. I am even disposed to go farther, and to say that I am utterly astonished that such forensic powers, so ably wielded, did not prove less abortive, but I must attribute the feebleness of the effect more to the weakness of the cause than to the want of genius in the advocate. However, Mr. Prentiss really astonished me with one proposition he laid down with respect to the common law of this country, that every man is to judge for himself where the point of danger lies that entitles him to disable another, or to kill him, lest he might, in turn, by possibility, become the killed; so that, in fact, if it were so, the point of danger could never be defined by law, because what a brave man would consider no danger at all, a timid man would consider the point of danger bristling with a thousand deaths Was there ever such a monstrous doctrine recognized by the laws of any community?

"(Here Mr Prentiss interrupted Mr. Hardin to say that he had only urged that what might be considered by a man, from apparent circumstances, the point of danger, where resistance was necessary for his own preservation, would in the law be grounds for justifiable homicide.)

"Mr. Hardin: I will come to that in due time. The dilemma can not be removed, that the same point, according to this doctrine, is, and is not, the point for resistance contemplated by the law. No, gentlemen; the law recognizes no such absurdities. The law was laid down yesterday correctly by the district attorney, that when the killing of a man has taken place, it is murder in the eyes of the law, and must be pronounced by the law to be a murder till the contrary is shown. What, then, becomes of this new doctrine, unknown to the law, that the slayer, and not the law, is to judge and

presume the justification? The law itself says all killing of one man by another is murder. The slayer, according to Mr. Prentiss, says: 'Oh, no, I killed my man because I fancied he would kill me; it is not murder, it is justifiable homicide!' Yet, the law again says, if a sheriff, who hangs a man by lawful authority, in doing so commits only a justifiable homicide, should, even for the best of motives, instead of hanging the man, as bound to do, chop his head off with a sword, though death must necessarily follow either way, yet he is guilty of murder, and liable to the punishment for the killing contrary to the prescribed mode of his duty.

"There are certain maxims of the law laid down in the books which are never disputed, because they are founded upon reason and just principles; such, for instance, as these: If A kill B from necessity, to save his own life, the danger being undeniable, it is excusable homicide. If A kill B in a sudden heat of quarrel, it is manslaughter. If A kill B without what, in law, is called a competent provocation, it is murder. If a man fire a pistol-ball into that crowd and kill a man, though it were his bosom friend, against whom, personally, he could have no previous malice, it is murder, though he did not intend that death. It is murder in the eye of the law, because the recklessness of human life implied in the rashness of the act shows that general malice toward mankind which is equally dangerous to the community as any private malice could be. I will read you the law upon the subject of words in a quarrel being no provocation sufficient to justify assault. (Here Mr. Hardin read the well-known text that words are no provocation in law.)

"All killing is murder, unless a good excuse is shown, but words are no cause, because they never bring a killing below the crime of murder; neither are indecent and contemptuous actions justification, according to Raymond and Blackstone. Here is a maxim in point: If there is a previous quarrel between A and B, and some time after, in consequence of the previous quarrel, they fight—then nothing connected with the previous quarrel justifies a killing, and it can not be excused unless it clearly appear that B, in killing A, had to do so to save his own life.

"The application must be made to the fight at the tailor's shop, and this answers the question why we have introduced evidence in the proof of the first affray. There is one principle of law which I may as well now call your attention to as at any other time.

"When men act together, and by consent, it is no matter who gives the wound causing death, they are all guilty in the eye of the law of the offense, whatever it may be.

"And in relation to that sort of wound—if a man receive a wound not of a dangerous nature, but by gangrene or consequent fever death ensues, it is murder or manslaughter, as the case may be, as much as if the wound itself had been mortal at the instant.

"Mr. Prentiss labored a position, and labored it ably, I admit; but Mr. Bullock had previously combated its application successfully. The position is advanced upon the well-known quotation from Lord Hale:

"'If A, B, and C be walking in company together, and C assault B, who flies and is in danger of being killed from C's pursuit unless present help be afforded, and A thereupon kill C in defense of the life of B, it seems that in this case of such inevitable danger of the life of B the killing of C by A is in the nature of self-defense; but it must plainly appear by the circumstances of the case as the manner of the assault, the weapons with which it were made, etc., that B's life was in imminent danger.'

"A man seeing another kill a third person may kill the man about to commit the felony, but then it is at his peril he does it, and he is responsible to the law for his interference. Upon this text, if you are to acquit Judge Wilkinson it must be apparent that when the stabbing took place there must have been manifest danger of his brother's life; there must have been an apparent, an absolute, necessity. To show that there was no such necessity, and to place before you a clear view of the leading features of the facts, I will now claim your attention to the review I shall make of them.

"Mr. Redding keeps what is called a merchant tailor's shop on Main street, in Louisville. His store is not far below the Galt House, on the opposite side.

"These three gentlemen now arraigned before you are residents of the State of Mississippi, and formerly, as I am informed, were residents of the State of Virginia, and, for aught I know, of the same county, town, or village. They came to Kentucky early in December, for what is of no importance that I can see, although it is made to cut a conspicuous figure here as a favor conferred on Kentucky—a contemplated marriage at Bardstown. They arrived at the Galt House. Where Judge Wilkinson had his clothes made up, if he had any prepared for the occasion, is not shown. Where Mr. Murdaugh had his made, if any, is not shown. But it was shown that Dr. Wilkinson was to have clothing made at Redding's. They were made with great punctuality, and the Doctor came to Redding's store at the appointed time. He tried on the new coat, and seemed well pleased with it. So satisfied was he with the coat that he wore it on the spot, and left a one-hundred-dollar bank bill on account of payment, requesting Mr. Redding would hold over the bank bill, which was of a Mississippi bank, till some expected change for the better would take place in the rates of discount. Dr. Wilkinson then went away, wearing the coat, and desiring the other things to be sent to the Galt House. As I now come to where it will be necessary for me to mention the names of the witnesses, I beg it to be understood that I do not mean to avail myself of the example set by the opposite side. I will not shelter myself behind my professional duty, to villify an unfortunate witness, disarmed of his self-defense—unfortunate,

because of his inability to make any reply in the same public court in which he is maligned. Younger gentlemen at the bar than I am may indulge in the practice, and, perhaps, the rashness of youth and inexperience may excuse what wisdom and manliness could not justify. No character, however spotless—no reputation, however unstained before—can escape the sullying hand wantonly raised to tarnish it, where there is no immediate opportunity of wiping away that which corrodes while it damps the luster.

"When Dr. Wilkinson returned to Redding's store, accompanied by his brother and Mr. Murdaugh, some objection was made to the collar of the coat. It was no serious objection, we may suppose, for we hear from Mr. Prentiss himself, 'the expectancy and rose of the fair State,' that he, perhaps, would not have been quite so fastidious. Perhaps some young fellow like my friend Colonel Robertson, 'the glass of fashion and the mold of form,' might have been a little squeamish; but, for myself, every one knows I am not particular. I never should have knocked down a tailor with an iron poker because there was a shade of fashion lacking in the collar of my brother's coat. The whole thing is a matter of taste, the poker included.

"There was, however, some objection to the fashion of the coat—and that objection was thought grave enough to enlist the triple wisdom of a dignified judge of the land, an eminent doctor of a distant State, and a sage member of the Mississippi bar. Yes, with this formidable array of judicial wisdom, pharmaceutic skill, and legal research, these three gentlemen came to a little store in Louisville, to fight a poor tailor! And all about an unfashionable twist in the collar of a coat.

"To be sure they came from the Eldorado of the South, with their thousands of bales of cotton condensed into their pockets. They were perfect magnets of attraction, for the secret of their loadstone lay wrapped up in their Mississippi bank notes. Hotel-keepers were bowing to them on all hands; tradesmen and store-keepers honored the pavement they trod; and as to tailors—I am ready to believe they became perfectly fascinated with them. Nay, I even make no doubt that the keepers of watering establishments and medical springs submitted to the soft impeachment, and became devoted to their interests. It is the necessary consequence of the influence of cotton bales.

"Here was a hard-working tailor, ever on the watch for good customers, bowing to them as assiduously, if not more assiduously, than the hotel keepers or spring doctors, taking back his coat, I have no doubt, with tears in his eyes; but is it reasonable to suppose that, fascinated as he was by the ability of such customers to pay, he would be so blind to his own interests as to give unprovoked quarrel to such customers? However backward he may have been from prudence and circumstances, it seems there was no want of readiness to carry matters with a high hand on the part of those with whom he was dealing.

"Judge Wilkinson is sitting on a stool at the stove, and when he sees his brother about to pay for the pantaloons and vest, he interferes, without being called upon to do so, and opposes the payment for these things, upon which the tailor very naturally asks him what business he has to interfere. The judge, without telling him that he was the doctor's brother, which Redding did not know, and that as much as he had a right to advise him, jumps up, snatches an iron poker, with which a man could be knocked down as readily as with a crow-bar, and for the small provocation of a tailor saying 'You make yourself a little too busy in the matter,' ignorant that he was addressing a dignified judge, the judge aims a deadly blow at his head, which, if not fortunately warded off, might have involved consequences to which I must not advert. What does this prove? If it proves nothing else, does it not show plainly that Judge Wilkinson is not quite as mild and forbearing in his disposition as his friend Mr. Prentiss would have you to believe? Did Judge Wilkinson's conduct show that it was his belief men's passions should be subject to the control of law, if not of reason? that he was in principle a respecter of the law in this instance?

"I know that it will be argued that there is a wider latitude given to the restraints of law in the Southern than in the Northern States, and a false assumption is built upon this circumstance, that the free use of personal liberty, to avenge private quarrels, gives greater bravery to a people. But I have read, I have witnessed, and I believe that the people of New England, a section of this great republic where you can get no man to fight duels, and where every man throws himself under the protection of the law for the redress of his private wrongs, when they have been called into the field for the protection of their country, have shown the brightest examples in modern history of personal bravery and national valor. Show me where men have been more prompt to rush upon the bayonets of their country's invaders than the heroes of New England. Sir, courage and bravery belong to the respecters of the law which protects every man's rights in a civilized community. Climate, in a country of such vast extent as this, may have its influence on men, as it is known to have on the inferior race of animals. You may meet the lion, distinguished for his courage and his power, in the Barbary States, where, conscious of his strength, you may pass him unmolested, if you are not the aggressor. As you descend to the more southerly latitudes, you meet the leopard and the panther, with whom treachery and ferocity are the substitutes for courage; and when you pass the equator you meet the hyena, the emblem of uncompromising cruelty, without a redeeming quality. Men may, in like manner, be affected by climate; and he who on the iron-bound coast of the frozen North, or on the arid rocks of New Plymouth, would illustrate every noble virtue of his nature, not less distinguished for his piety than his patriotism, for his endurance than his courage, and for his generosity than his bravery, when trans-

planted to the enervating regions of the South, may become different and degenerated, trusting more to his interests than his patriotism, to advantage than to courage, and to concealed weapons than to bravery.

"But to resume my review of the evidence. Judge Wilkinson, so remarkable for his mildness and forbearance, as a sample of these qualities aims a blow, as I have said before, at the tailor's head, which probably would have killed him had he not warded off the blow with his arm in a manner to give great offense to Mr. Prentiss, who can not see the propriety of a tailor grappling with a judge to prevent a repetition of blows that might break his head. The little tailor, however, did grapple with the judge, and, dragging him to the side door, he falls with his adversary out on the pavement. The tailor, though small, being strong and active, turned the judge under, and as he did so Murdaugh hallooed out, 'Kill the d—d rascal'—a command which the doctor was about to obey; and when he was within a couple of inches of plunging his dirk into the tailor's heart, Mr. Redmond caught the doctor's arm. But for that interference it would have been the last of Redding's career. Mr. Murdaugh had hallooed out to the doctor, 'Kill the d—d rascal!' This is easily accounted for. When he saw that Redding by Redmond's interference had gained the advantage, he perceived that the tables were turned, and, fearful of the consequences, became quite as impatient to have them parted as he had before been anxious to have the tailor killed. Well, they are parted; and when they get up, Dr. Wilkinson still has his knife drawn. Mr. Murdaugh has his knife drawn, and the judge has his favorite weapon, the poker. The little tailor's courage, notwithstanding this formidable array, is up, and steps forth, a David before Goliah, and offers to fight the whole three of them if they will lay aside their weapons. This, I think, however, was a mere brag with the poker players, for I do not believe he could have done it. Five witnesses swear that both Dr. Wilkinson and Mr. Murdaugh had out their knives. Several concur that Dr. Wilkinson re-entered the store with his knife drawn, demanding his one-hundred-dollar bank bill. All agree that he got it, and many agree that when he and his companions left for the Galt House, two went away exhibiting their knives, and one rejoicing in the poker. The knives, to be sure, have been identified as white-handled knives. Mr. Prentiss, in that able speech which you have all heard and admired, and which, it must be admitted, like a West India tornado, swept through this house carrying everything before it, even to the reason of many who heard it, seemed to think that we had some particular fancy for the handles of the knives because they were white handles. He thought we dwelt uncommonly on the whiteness of the handles, till like spectres they were continually flitting before our visions. With all this poetical or forensic coloring we have nothing to do; we only identified them, and the gentleman has failed to contradict us by proving that they were black, green, or red.

"We have now, gentlemen, traced a small portion of this affair at the tailor's shop. In what occurred there immediately after what has been mentioned, we find the following facts established: Mr. Redding swears that he was advised to enforce the law against these gentlemen. The principal officer of police, the city marshal, is usually to be found about the mayor's office or jail, from the peculiar nature of his duties. Mr. Redding proves that he and Johnson went toward the mayor's office and looked for the marshal at Hyman's and Vacaro's coffee-houses. Not finding him there, they went on to the mayor's office. They applied at the mayor's office to Mr. Pollard, clerk of the city court, and told him that one of the gentlemen was named Wilkinson, and that the names of the others they did not know. They were told by Mr. Pollard that they should have the names; or, if they wished, they might have a blank warrant to be filled up with the names when ascertained. This Redding declined upon being told that if he could meet the marshal he could arrest the parties without a warrant. Redding and Johnson proceeded to the jail in search of the marshal. Not finding him there, Redding returns to Market street, at the corner of which he met Rothwell, near his residence. He tells Rothwell, his brother-in-law, the nature of the affair; Rothwell goes along with him. And here I must remark that, to come down to Market street from the jail is the shortest way, though my friend, Colonel Robertson, thinks that a man may go around by Jefferson street, a few hundred yards out of his road, by the way of a short cut. But Redding being but a plain man, not given to sophistical deductions, believes the nearest road is the shortest cut, and took the shortest cut by Market street, where he met Rothwell, as I have said, and told him what had occurred. He did not ask his brother-in-law to go with him, but his brother in-law did think proper to accompany him. There was no Bill Holmes, no Marshall Halbert, no Billy Johnson; no one but Rothwell accompanying Redding. Mr. Graham swears there was no one with Redding but Rothwell, when he met them near the Galt House. Where was this terrible array of giants and Patagonians of which we have heard so much? Why, nowhere, to be sure; the gentlemen have only drawn largely on their imaginations. As Sheridan once said of Dundass, they are indebted to their imaginations for their facts, though I will not go so far as to say of my sprightly friend, Colonel Robertson, or my brilliant friend, Mr. Prentiss, that either is indebted to his memory for his wit.

"Jackson swears, indeed, that he heard of the proposition of going to the Galt House to give the Mississippians a beating; yet Graham swears Jackson would always lie a little. This Jackson, whom we have shown to be unworthy of credit, swears to that being a fact which is contradicted by Redding, Johnson, and by Craig, whose credibility is unimpeached and unimpeachable. But it seems Mr. Prentiss takes peculiar exceptions to Bill Johnson, because he uses strange figures of speech and low and outlandish

tropes and metaphors. Well, the gentleman ought not to blame poor Johnson for imitating his betters in the arts and graces of oratory. I suppose he has been reading the newspapers in which the reported speeches of the most eminent members of Congress are recorded, and he finds one distinguished gentleman charges a party with being like a greasy pack of cards, all spotted and marked and shuffled together. Another young aspirant compares the secretary of the treasury, a dignitary old enough to be his father, to a she-bear running through cane-brakes and dropping her cubs at every step; and yet Johnson is blamed for his figures, if he ever used them, 'of hides full of shucks,' and 'skinning of sheep.' I thought Mr. Prentiss, who so lately returned from Congress, would have admired Bill Johnson for being so apt a scholar, like that classic personage, Zip Coon, in picking up the new and improved style of tropes and metaphors now so fashionable in the places which he himself has made resound with the aptness of his illustrations.

"Gentlemen, I had got to this place, in the affair at the Galt House, when Redding and Rothwell were seen, unaccompanied by any one, entering that hotel. Redding says when he went into the bar-room he looked over the register and called for the names. Scarcely had he got them when Judge Wilkinson entered and stepped up to the counter to take a drink of water. Redding addressed him thus: 'Sir, I believe you are the gentleman who struck me with the poker, in my own house, this evening?' If Judge Wilkinson was sorry for his imprudence, why did he not then say it was in a hasty moment, and, upon reflection, he felt that he was wrong? Could Redding have resisted the ingenuousness of such an answer to his inquiry? Could he have harbored for a moment longer any irritation for an acknowledged injury? But what did Judge Wilkinson say or do? Why, he heaped insult upon injury by an aristocratic allusion to the tailor's profession. 'I will not,' he replied, 'fight or quarrel with a man of your profession!' Now, although I agree with Mr. Prentiss that there is nothing disgraceful in a profession, and I think the poet has expressed himself with scarcely less felicity than Mr. Prentiss on the subject:

> "'Honor and shame from no condition rise;
> Act well your part, there all the honor lies.'

And as Burns says,

> "'The heart's aı the part, aı
> That's right or wrang;'

Yet, we can not help imbibing with our literature and our sentiments many trifling prejudices from the mother country, where aristocratic pretensions have too successfully attached disgraceful notions to certain pursuits of industry, and among these, the profession most sneered at by the would-be wits of the last century is that of a tailor. And, although a man of that profession here may justly feel that he is as respectable, and follows as

respectable a calling as any other man, yet, when he thinks those old sneers are leveled at him as an insult, he naturally resents it with the indignation of an honest, industrious, and free citizen, not bound by a servility unknown to us, to succumb to him who dares to utter it.

"There is, I fear, a principle growing up amongst us inimical to our republican institutions—a principle of classification favorable to aristocratic distinctions. We have our bankers, lawyers, and doctors, arrogating one rank in our society; the statesmen, heads of departments, and officials, another. Our mechanics and those who toil by the sweat of their brow to produce our riches are cast into the shade; and knowing, as they do, that such an attempt, however noiselessly it is made, still exists palpably, is it any wonder they would be sensitive to every whisper that is breathed to mark the invidious distinctions? An apparent unimportant word may wound deeper than rough language. Call a man a knave and he may forget it; but call him a fool and he never forgives you. Call a young lady a coquette and she may pardon you; but tell her she is ugly and she will never abide you the longest day she lives. Tell a tailor he is a botch and he may not even get angry with you; but sneer at him about his goose and his profession and you insult him, though the words in themselves are harmless. It is the allusion to the prejudices that have existed which carries the poison of insult in its barb. Sir, we must not disguise the fact that there is a line of demarkation drawn by the proud and arrogant between themselves and those who live by the sweat of their brow; between the comparatively idle, who live but to consume, and the industrious, who work but to produce; between the drones of the hive and the laboring bees. And to which, pray, is the country in its strength, prosperity, and wealth, indebted for its teeming productiveness? To which for her energy, enterprise, protection, genuine patriotism, and celerity in national or municipal times of danger? Go to Louisville when a portion of the city is enveloped in flames and you will see a thousand mechanics rushing into the devouring element for the protection of property, while the lawyer and judge and haughty aristocrat walk about as spectators with their hands in their pockets. The mechanics compose the moving power and labor-working machine upon whose industry we all feed and fatten. Their labors are the wealth of the country, and when we cease to honor and cherish them, we poison the springs of our own invigorating prosperity, and cut off the sources of our own enjoyments. Do we treat them with gratitude when we taunt them with epithets, which they esteem derogatory or insulting? Are we to treat them thus in the halcyon days of peace, and when the thunder cloud of war gathers around our course, with a monstrous pusillanimity. fling ourselves into their arms as our only hope and rescue? Has not the history of our country shown, and will it not show again, that when the storm of invasion ravages our coasts, our safety is to be found alone in the strong sinew and ready arm of our laboring popu-

lation? Where, then, are your bowie-knife-and-pistol gentry, your duelists and your despisers of the man who lives by the sweat of his brow? Sir, they will be found cowering and lurking where they may snuff the battle afar off, and hide their once lofty heads in ignoble safety. But I will not consume your time with recitals which may be found in every page of our history. I shall return to the evidence in the case before you.

"Mr. Everett is told by Mr. Sneed that there is likely to be some difficulty. Mr. Everett goes into the bar and by some indications to the judge meets him in the passage and takes him to his room, where they find Dr. Wilkinson and Mr. Murdaugh. Judge Wilkinson relates to them what has happened. The judge, having made this revelation, asks Everett to provide him with pistols. Why? For what did he want them? Was any one attacking him there or likely to do it? They were safe in their room. They could only want pistols for the purpose of descending and making the attack themselves. But Everett is asked to provide pistols. He said he would try, and with that avowed purpose, left them. He had not been gone fifteen minutes, in the opinion of some—in the opinion of others scarcely ten—when Judge Wilkinson, with this lower-county tooth-pick (taking up the bowie-knife)—not trusting this time to the more merciful weapon with which he had been practicing, the tailor's poker—with this lower-county tooth-pick he started down prepared to use it. Did he know Rothwell? Did he know any but Redding? No man had accosted him but Redding. Why, then, did he come down with this terrible implement of murder? Why, sir, just exactly for this reason, that he had been mortified at the result of what happened at Redding's store. The judge of the land had been turned over by a tailor. He had been bearded and abused by a tailor, and he provided himself with his bowie-knife and went down to have another deal with that tailor.

"Mr. Prentiss seems to think the judge had a right to go down to his supper. Why, so he had; but he had a right to wait for the bell to ring. He had no right to eat his supper before it was served up—no right to take his bowie-knife down to the kitchen and terrify the cooks to allow him to devour the supper while it was cooking. And, had the supper been ready, there were table-knives wherewith to carve his meat, and he had no right to carve it with a bowie-knife. But the supper was hardly cooking when he went down. The bell had to ring over the private passage up-stairs before it was rung below; and, when rung below, the folding doors had to be thrown open. But the bell had been rung nowhere; and Judge Wilkinson, Dr. Wilkinson, and Mr. Murdaugh, came down before any bells were rung; therefore, it was not to supper they came down. Which table had Judge Wilkinson been in the habit of going to, the large table, or the ladies' table? There is no proof that he and his companions boarded at the large table; and it is known that many gentlemen as familiar with the house as they had

been, prefer the private or ladies' table. We have every reason to believe that was the table at which they boarded. The entrance to the room where that table is kept is not through the bar-room. One entrance to the large dining-room is, indeed, through the waiting-room, and there is a bar in that waiting-room at which many gentlemen who are not pleaders become suitors, make motions, and put in their pleas. I sometimes make my appearance at that bar, but I am not summoned by the attachment of the bottles. I go to hear the politics of the day—for, although I have long since quit the field, I can not be cured of the curiosity to know what wrangling is going among the little juntas in every village, as well as among the mighty ones of Congress.

"When these three gentlemen got into the bar-room, Mr. Redding was at the counter; Mr. McGrath was inside of it; Mr. Reaugh was at the fire. Some say Mr. Redding came in immediately after the judge. You must expect that out of twenty witnesses no two will agree in all the facts; but in a transaction like this, where several fights were going on—where in every corner a man was bleeding, or dying, or suffering—that no two men could see anything or everything alike is to be expected. But, gentlemen, by collecting all the evidence together, contrasting, comparing, and justifying one by another, we can arrive at the facts of the case clearly and beyond the probability of a doubt. We can arrive at them with as much certainty as we can at any other set of facts. And from this manner of collating the facts I am enabled to present them to you without fear of contradiction.

"One of these facts is that Judge Wilkinson walked across the bar-room, some twenty-five feet, when he came in. Mr. Trabue, a man whose evidence is to be depended upon, seems assured that when Judge Wilkinson came in he walked three or four times across the room, and then stood awhile with his eyes fixed upon Mr. Redding, his foot advanced, and his right hand behind in his coat pocket, and, I make no doubt, with his hand grasping the handle of this very bowie-knife. At that moment Mr. Murdaugh went up to Redding. I will not say, with one of their own witnesses, that in going up to him he rattled like a viper; but as he went up he addressed Redding, saying, 'I understand that you say I drew a bowie-knife on you in your shop this evening; if you say so you are a d—d rascal or liar!' And as he said so he opened his knife and elevated it, as one said, or held it down, according to another. Yes, he accosted Redding in the most insulting terms, and threw open his knife at the same time. Is there any witness who has said Redding accosted him in an angry manner? One person said of the knife: 'Lord! how it gleamed in the candle-light!'

"The most warlike nation the world ever saw was Sparta. When the Spartans prepared for battle, they polished their arms to glisten in the sun. They washed their clothes clean, combed their long black hair, and sang the song of battle. I have no doubt Mr. Murdaugh, if in the ranks, would have

done the same. I make no doubt he would be the last to run. I make no doubt he would have been among the foremost to make his gleaming blade glisten in the sun. The highest evidence of a man's dexterity and intent to use his weapons is the high polish he gives them, and the high state of preservation in which he keeps them for use. Of Murdaugh's dexterity in the use of his knife in the work of death we have, unfortunately, too much proof; of his disposition to use it we have the evidence of the high order in which he kept it for use, even in that state of Spartan polish, which made it gleam in the candle light as the sword of a Spartan would glisten in the sun.

"We are told Meeks was determined for a fight; yet Oliver, whose friendship for these gentlemen seems to have been of the most ardent and disinterested kind, gives up to Meeks his knife, after having so easily obtained possession of it on the small pretense of picking his nails. He has been invited by Oliver to drink at a 'saloon,' opposite the Galt House. They dignify these establishments nowadays by the high-sounding title of 'saloons,' but when you enter one of them you find it the vilest groggery in the world. These dignified groggeries exist to a shameful extent in Louisville, and why? Because the politicians of Louisville are too busy with their unimportant bickerings, or too truckling, to put them down. They are the strongholds of the voting interests of Louisville; and the truckling politicians, who are ready to sacrifice every principle for the triumph of party, court the coffee-house keepers and bend in supplication for their election to the inmates of the groggeries. Even the municipal government is either influenced by paltry mercenary motives in its avidity for the revenue of licenses, or it has not the nerve or public spirit to grapple with the monster. Talk of our Constitution being the greatest, the purest, and the most efficient on the face of the earth! Yet, here is an evidence of its workings in a duplicate government. The most destructive of vices, because the parent of most, is licensed, encouraged, fostered, pandered to, by politicians, and, through their truckling, by the very local government itself, as if the misery and debasement of the community were more the end and aim of their rule than encouragement of virtue, industry, sobriety, and rational enjoyment.

"We learn that Meeks was unknown to many—a slender, small, and weakly man, with a bit of a cowhide, the lash of which some one says was knotted. From what we learn of this cowhide, I verily believe it would take at least five hundred knocks of it to kill a man; and I doubt if he could be well killed, after all, even with five hundred knocks with it. Meeks, unfortunately for himself, stepped up to Murdaugh and said, 'Yes, you are the d—d little rascal who did it.' In reply to this, the very first lunge Murdaugh made at him severed a vital artery and caused his instant death. I am no physician, and know not technically what effect the cutting of that artery may have; but I believe it to be as deadly as if the brains were blown out or the heart pierced. A man stabbed through the heart no longer lives or breathes,

but he may stand a minute. Meeks fell, and in attempting to resume his feet, as he leaned on a chair, pitched forward on his face, and when he was examined he was dead.

"When did Rothwell strike Murdaugh? Not till Meeks was killed. Then, it is proven, Rothwell struck with a cane and Murdaugh was beaten back, and at that instant the tide of battle rolled on to the right corner as you face the fire, and then Rothwell was seen losing his grip of the cane in his right hand, and he was seen endeavoring to resume his grasp of it. General Chambers thinks it was Dr. Wilkinson whom Rothwell was beating at in the right-hand corner, but every one else says it was Murdaugh. Every witness swears Rothwell was engaged with Murdaugh in the right-hand corner while Holmes was engaged with Dr. Wilkinson in the left-hand corner. Let us now consider the wounds received by Rothwell. Dr. McDowell says the puncture in Rothwell's chest might be made by this knife carried by Murdaugh. The skin by its elasticity might yield without having an orifice as large as the blade, afterward apparent.

"Who gave Rothwell that wound? Why, Murdaugh, and nobody else. This accounts for Rothwell losing the grip of his stick or his cane. The moment the knife penetrated his chest on the right side, that moment his arm became paralyzed, and he could not hold his cane. He caught at it, but did not use it after. Just then Judge Wilkinson came up behind with his bowie-knife in his hand, and General Chambers says he saw him make a lunge at Rothwell and stab him in the back. If two men are engaged in a fight—one with a dirk-knife like this, and the other with a stick—in the name of God, let another with such a bowie-knife as this stand off; but if he must interfere on behalf of him who has the deadly weapon, and against him who has not a deadly weapon, let him do the work of death front to front—let him stab him in the breast and not in the back. But, to come up behind and stab him in the back, who is already overmatched by his opponent in point of weapons, evinces a disposition which I shall not trust myself to dwell upon or to portray. Ossian, in speaking of Cairbar's treachery, says:

"'Cairbar shrinks before Oscar's sword! he creeps in darkness behind a stone—he lifts the spear in secret—he pierces my Oscar's side!'

"By this time Dr. Wilkinson was down in the left-hand corner and Holmes over him. The fact is, Holmes was the only man that knocked the doctor up against Trabue, though Halbert boasted of having done it. It was only a boast in Halbert, for I believe he goes over his foughten fields more at the fireside than on the battle-ground. In the language of Dryden, speaking of Alexander:

"'The King grew vain;
Fought all his battles o'er again,
And thrice he routed all his foes,
And thrice he slew the slain.'

"(It was now five o'clock, and Mr. Hardin requested an adjournment, as it would probably take him two hours more to conclude his argument. To this the Court assented, and an adjournment was made to half-past seven next morning.)

FIFTH DAY.

FRIDAY, March 15, 1839.

"(The court resumed the trial at a quarter before eight o'clock. Early as the hour was, there could not have been less than two hundred ladies in the gallery, and upward of a thousand men in the arena of the court. After the jury-call and the reading of the minutes, the court required Mr. Hardin to resume his argument. Mr. Hardin commenced at eight o'clock and spoke without intermission for upward of two hours.)

"Mr. Hardin Gentlemen of the jury, I would endeavor to resume the few remarks on the evidence which I offered yesterday, as near the precise place where I left off as possible, if I did not know that in the present case such particularity is not so requisite as in the case cited by John Randolph, who once told of a man that was so precise that he could, if interrupted and called off in the middle of his dinner by the sound of a horn, take up his dinner exactly at the identical bite where he had left off. I am not quite so particular, and shall probably recapitulate some of the evidence I have already gone over.

"Yesterday evening I attempted to give you the law and the facts of the case as nearly as possible, as far as I went. I shall now repeat that you are not to take as facts all that may be sworn in a cause. Although witnesses may be men of undoubted integrity and veracity, yet all they state are not facts. They are fallible beings, and likely to misconceive and misinterpret facts without any intention of doing so. We are to ascertain the facts from the mass of evidence, and judge of each witness' competency by contrasting his evidence by that of others, and when it agrees with all or a majority of the witnesses, we may safely infer he is right. I endeavored yesterday to examine the facts that occurred at the tailor's shop, for the purpose of showing the ill blood fomented in these gentlemen's hearts against Redding. I then showed that they acted in concert, and provided themselves with what weapons they could, not being able to get all they wanted; and how, upon a small occasion, they were prepared to use these weapons. Indeed, there seems to be no witness as to what occurred when Judge Wilkinson remained in consultation with his companions in his bed-room.

"(Here Mr. Hardin made a short recapitulation of the statement he had gone over before, so nearly alike in substance that it is conceived unnecessary here to repeat it. However, some of these points elicited observations from Mr. Hardin, new or important, which it may be necessary to give. The repetition of such points of evidence will be excused.)

"We may judge of the shifts the defense is driven to, when it is forced to rest upon such witnesses as Oliver, a man whom no one in Louisville would listen to; and Jackson, the Pharisee, who talks of religion without a spark of it in his heart, and who is discredited by men who, as witnesses, are unimpeached.

"If Judge Wilkinson, Dr. Wilkinson, and Mr. Murdaugh were known to be frequenters of the bar before meal times, why has it not been proved by one of their witnesses? That not being proven, I have a right to assume it could not be done, because it was not the fact.

"Next I have to ask, why these gentlemen come into the bar-room provided with arms? Could it be with any other design than to run Redding out of the room? Were they going into a room where they commonly resorted? It is evident they were not. Did they go there on their way to supper? It is evident they did not, for supper was not near being ready.

"What disposition for eating a supper merely does it show in Judge Wilkinson to pace the room three or four times, and then fix the eye of destruction on Redding, while his purpose kindles, and he grasps his bowie-knife behind in his pocket? What more eagerness for supper does Murdaugh exhibit in going straight up to Redding, rattling like a viper, and charging him with being a liar? Sir, I care not if a man go into any crowd, and, before an angry word is used to him, he goes up to as meek a man as Job himself, and says, 'You are a d——d liar, or rascal,' and flings open his blade to inflict mortal injury, as his words indicate, if the person so accosted strike his insulter, it is not surely any great wonder. And yet Redding did not strike a blow. Mr. Murdaugh may say, 'I kept within what I thought was the safe side of the law—I approached with my drawn knife—insulted the person to draw on the attack from him, that I might have some excuse for using my knife in the manner in which I came to use it at any rate.' If any man come up and call you a d——d liar, or a rascal, and spring open his knife in the attitude of striking, should you strike or slay such an assailant, would you not be excusable? But Colonel Robertson attributes to acts of this kind nothing but a manifestation of innocence and high spirit. The colonel is really a gallant man, and judges of others by the fire and chivalry raging in his own breast. You must not laugh, gentlemen, for if you could look upon the volcanic mountain, though you would see its head capped with snow, you would find its bosom, like his, rumbling with fire, smoke, and brimstone. In former times, the highest honor known to a Roman soldier was to have saved a man in battle, but here it is argued that if a young aspirant to fame pinks and kills his man, he is to be sent home to his parents in honor, crowned with the chaplets of victory. Nay, it is believed if Bonaparte, in his youthful prime, in his Italian campaigns, had had Murdaugh by his side, he would have confided to his ready and unerring arm the execution of many a hard adventure. Colonel Robertson may say

what he pleases, but I say it was Murdaugh commenced the assault, and that all fighting done by him was in the wrong. All fighting done on his account was in the wrong, because he had commenced in the wrong.

"Well, gentlemen, as I remarked to you yesterday when I stopped—for I am now returning once more to that point—Murdaugh had given the first provocation, had killed his man, and stabbed another to the death, when Judge Wilkinson stepped up and gave Rothwell a stab in the back, while engaged with and probably receiving the stab in the chest from Murdaugh. Yes, gentlemen, a third man comes up and lunges this beautiful little weapon into Rothwell's side, and starts back! Sir, if men are engaged with deadly weapons, part them if you can, but do not come up behind them and lunge a bowie-knife into the vitals of one, and then come into a public court and demand it not only to acquit you, but to do it with shouts of 'Glory, glory, go, go!' And yet, gentlemen, this is the polite invitation given to you by Mr. Prentiss, to acquit such a man with acclamation. When engaged with a man who has only a cane no bigger than his thumb, his opponent gives that man a deadly stab in the chest which paralyzes his arm—a third person—Judge Wilkinson, for instance—comes up behind and stabs the paralyzed man in the back, it is, no doubt, high time for you to be called upon to mark your approval of the deed by shouts of acclamation? Mr. Prentiss, by the way of winning your favor by complimentary allusions, thinks Kentucky should no longer be called the 'bloody ground,' because the river Raisin has carried off the palm in feats of human butchery. But I think the Mississippi gentlemen, of Vicksburg, have bidden fair of late to obtain for that part of Louisiana opposite their city the palm of being the 'dark and bloody ground.' I suppose, in the far-famed Menifee duel with rifles, if some one had stepped up and lunged a bowie-knife into the vitals of one of the combatants, the shouts of acclamation that would have arisen in that quarter of the world would have resounded to the very uttermost ends of the earth.

"Dr. Wilkinson, by this time, became engaged with Holmes. Holmes is a stout and large man, but his size has been greatly exaggerated. Like the Patagonians, the first discoverers thought them ten feet in height; the next voyagers only eight, and the next but six. I recollect of reading of Captain Smith, that when he first explored the interior of this country, on his return he represented the inhabitants as all Goliaths, six cubits and a span in height. Yet, subsequently, more matter-of-fact men found they were only miserable and cowering Indians of ordinary dimensions. In this manner appearances are magnified.

"We are asked why Holmes is not here? We echo to the other side, 'Why is Holmes not here?' Our answer is, because he was not to be had, being a pilot down the river, and not within the control of the State's attorney or any process issuing from him.

"Mr. Trabue proves that Holmes knocked Dr. Wilkinson against him, and that Holmes followed up his blow and knocked the doctor down. Another witness proves that Dr. Wilkinson had his knife in his hand on the floor, and Redding proves that he found the knife on the floor, and it had blood on it. We have, then, evidence that all three were using their knives for the shedding of blood. Sir, among other appeals made to you for acquitting them, you are told, as a set-off, that there is no State in the Union on which you are more dependent than that of Mississippi. They take their cotton South and receive, either through shipping agents or drafts direct, their money for it from the merchants of Great Britain. True, Kentucky gets some of these dollars from the Mississippians for what they think better than their money, or their produce, or they would not buy it. We, in the rounds of trade, pay these dollars, or what represents them, to the Liver pool merchants for merchandise that we think better than the money. The Liverpool merchants in the next turn of the wheel pay the same dollars back to the Mississippians for their raw cotton, and the Mississippians are nothing loth to take our produce again for the same dollars. And after several twists of this kind, when we get them back and recognize one of them as an old acquaintance, we may say, 'How do you do, friend dollar, I am very glad to see the face of an old acquaintance; step into my pocket and warm yourself; I always give shelter to a traveling friend.' We are proverbially a hospitable people, and never refuse a night's lodging to a dollar or its liberty to travel further next day upon leaving us an equivalent for what we lent it. But, to be serious, are we not all dependent on each other? I know this, and can not admit that we owe more to Mississippi than Mississippi owes to Kentucky; and why there should, in this case, be made any parade about our indebtedness to that State, not founded in reality, is for you, gentlemen, to weigh.

"To resume the facts of this case, what does Judge Wilkinson do? He stabs Holmes in the arm; but he is not indicted for that. He stabs Rothwell, when he is engaged with Murdaugh, in the right-hand corner; and again, when in the left-hand corner, standing over Holmes, and trying to get him off his brother. Rothwell has been disabled by two stabs. Judge Wilkinson, standing at the dining-room door, when Rothwell was saying nothing except in mercy trying to persuade Holmes to spare Dr. Wilkinson, comes across the room to the opposite door, finds Rothwell's back turned to him, and then makes the last and second thrust of the bowie-knife into his victim's back. Mr. Robert Pope says: 'I saw Rothwell's back to Judge Wilkinson, when the judge stabbed him up to the very handle.' I ask you, gentlemen, I speak to you not in language other than broad and naked truth, is there any witness denies this? Every one that knows Robert Pope knows that he would not state what he did not know to be a fact. We know that each and all these wounds contributed to Rothwell's death. The last

stab is given by Judge Wilkinson to Rothwell, Dr. Wilkinson and Murdaugh retreat out into the passage, and fight their way to the foot of the stairs. I care not what was done there; it was done after the offense previously committed. Suppose Oldham had shot one of them, and not missed as he did; suppose Murdaugh had been knocked down; and suppose Judge Wilkinson received blows in the passage; does it lighten the offense previously committed? I care not what took place when a man has killed another. When making his escape, I care not now many guns are fired at him, how many rocks thrown, because it alters not his previous offense.

"If there is any evidence that any one in the bar-room laid a hand on Judge Wilkinson—who has proved it? Is it not plain that any bruises or injuries he did receive were received in the passage?

"Mr. Prentiss said he was willing to stack arms with the Kentuckians. What arms had they? They had a cowhide whip. We hear of a cane, which he thinks may be conjured into a sword-cane. Mr. Holmes, indeed, had his fists, but he could not stack them. We are told that Oldham had arms, by a witness who viewed the scene from the outside of a window, like one of the venerable birds perched on a dry limb eyeing the slaughter with a prospective instinct—one of those remarkable birds renowned alike for their gravity and great stillness. We have heard a good deal said, and well said, if true, about Oldham; that he was unsteady; that he cast his eye on his counsel for relief. Yet we really saw nothing in his conduct to warrant his being called perjurer, scoundrel, coward, and rascal; and here I must remark that this very talented young gentleman, Mr. Prentiss, in using such epithets to a witness without a shadow of justness in the application warranted me in saying that though I admired some passages in his speech, yet others I should feel bound to denounce as unworthy alike of his profession and of his character.

"No man in this State can boast of a prouder ancestry than that very Oldham, whom it has been attempted to brand as odious and infamous. They have been among the earliest settlers and esteemed of our citizens, trusted with command in our army, and venerated on the judicial bench. And has a man sprung from such honored stock no pride in upholding his name, no feelings to rouse his indignation when epithets as gross as they are groundless are poured out to tarnish his reputation, for the paltry purpose of influencing a jury to discredit his testimony, and to warp their judgments from the straightforward path of truth and justice.

"What proof has Mr. Prentiss to sustain the course he has taken? Sir, there is no shade of proof. The gentleman is indebted to the fertility of his fancy, and his best friends must regret that he has not, in this instance, cultivated that productive soil for some more praiseworthy object than an ignoble and disgraceful crop of baneful, destructive, and loathsome weeds. Does the gentleman think he is one of the angels appointed to pour out the

vials of wrath? Has he not indulged in pouring out gratuitously his vials of wrath on Mr. Redding, who could not escape? Redding is stigmatized as a murderer, to be haunted by the ghost of the slain at his nightly couch. Yet, what was his offense? He raised his arm to ward off the blow of an iron poker aimed at him by Judge Wilkinson. He has profaned a judge's person on this trifling provocation by seizing him, dragging him to the door, and turning him under. 'Oh, you scoundrel!' would Mr. Prentiss exclaim, 'why did you do that?' He had retorted upon Judge Wilkinson when taunted by him about his profession; and, worse than all, he did not, when the killing was going on, stay in some convenient place to be killed. 'Why did you not, you coward, rascal, murderer, perjurer, and so forth, turn your back to be stabbed with safety? Why did you not stand up with your face to the breeze when the sirocco swept along, carrying death on its pinions? Why did you fall on your face, and let the pestilential blast pass over you? Why did you not breathe until it was gone? You and your friends have offended us by your want of submission, and now you aggravate your offense by coming here to testify against us.'

"Really, it is astonishing they are yet alive! But it will be more astonishing, perhaps, when it is told that they will return to Louisville, and there stand, in point of reputation, just as they stood before these slanders were concocted, digested, and spewed upon them. It will turn out that they are yet unpolluted and unscathed. The same protecting Providence which carried the Israelites through the Red Sea will protect even these persecuted and wronged few.

"Gentlemen, I have endeavored to trace facts, as far as I have gone, with minuteness, and, having presented these facts to you, it is for you to determine whether they do establish these conclusions. When the fight occurred in the bar-room, it was brought on by these gentlemen intentionally. If they brought it on, did they fight in their own defense, or because they had drawn the conflict on themselves? Could Meeks have inflicted death with a cowhide, or Rothwell with a walking-stick, so as to render the killing of them necessary or justifiable according to the true spirit of the law?

"But here there is a proposition of law advanced by Mr. Prentiss which I must combat. He says that the law recognizes that the point of resistance unto death begins where a man himself believes the point of danger ought to be fixed. Then, we have no law at all—we may burn up our law books; this revokes all they contain on the subject of homicide. There are two men engaged in a quarrel, one as brave as Cæsar, the other as timid as a hare; one kills the other, when the quarrel has arrived at a certain point. The brave man, if he were a Marshal Ney in courage, is to be hanged, because he had no fear of his life when he killed his adversary. If the timid man is the survivor, he is to be acquitted with acclamation, because

of his cowardice, which made him imagine danger where there was none. Thus cowardness and rashness are to be rewarded and cherished, and bravery and forbearance punished with an ignominious death. Is it possible you, an intelligent jury, can be imposed upon by such sophistry? Is there so low an estimate of your understandings as to suppose it?

"A is tried and acquitted, because he is a base coward, and apprehends danger at a point where there was no danger at all. B is tried for precisely a similar homicide in every particular, and because he is not quite as big a coward as A, but apprehends some danger, is to be found guilty, and sent to the penitentiary for a term of years proportionate in duration to his lack of cowardice as contrasted with A. C, for precisely a similar homicide, because he is incapable of fear, is to be convicted of murder, and straightway hanged!

"(Here Mr. Prentiss interrupted Mr. Hardin, and explained, in substance, as before.)

"It makes no difference; the same principle is involved.

"I knew that I should have to combat this very principle the moment I saw the hack driving into town with a head peeping out of the window, which head I knew belonged to the shoulders of a certain gentleman from Mississippi. When I was in Vicksburg, I asked a gentleman how it was that Mr. Prentiss defended so successfully so many notorious murderers, who really merited the gallows? 'O,' said he, 'he has hit upon a principle which he calls law, that charms every jury to which it is addressed.' I asked the gentleman to repeat the magical words to me. He did so. It was the very principle I have been combating. It is possible that as the gentleman afflicted with this chronic principle, which he belches up with so much advantage to himself and relief to others, is now in the neighborhood of Medical Springs, esteemed so potent by Mississippians, he may resuscitate, by a few drinks of the charming water, a sophism which I have shown to be no longer tenable by any one who values what is healthy and sound above that which is merely delusive.

"Sir, the principle of self-defense does not warrant a man in killing under the name of self-defense, if he is himself in fault by being the aggressor.

"Is the principle of self-defense among nations to be carried into effect as justly applicable to the right of self-defense among individuals? In national controversy, the law of nations, an imaginary code of mutual convenience, is referred to according to the custom of the country, but in a conflict between individuals there is a defined law which must be the redresser. A nation with right and justice on her side may be conquered by another nation in the wrong, and can not sue for or obtain redress from the wrongdoer; but an individual, in a community, may be wronged by another and can obtain redress, because he has the law common to both, and a superior

power to appeal to. Therefore, there can be no dependent analogy between the laws of nations and the laws of individual communities. There was some crude idea thrown out yesterday that the laws of Great Britain ought not to be enforced here. We are not to be told at this day that we have any other common law than that derived from the common law of England. The very principles of our statutory laws are dictated by the genius of English common and statutory law, with the exception of such local differences as require local application of principles. If the gentleman could take from us the right to apply the law of England where it would be in point for us, we could, by reciprocity, deprive them of any they might most rely upon. Where, then, is the advantage of raising such an objection? But it is quite unnecessary to dwell on this point.

"I shall now advert to the peculiar necessity enforced upon us of becoming a law-abiding people, if we would preserve any regard for our present form of government and constitution. In empires, monarchies, and kingly governments, armies are formed to keep the people in order; but in a republic, what could preserve the social compact but the law? The moment you dissolve or dispense with the law, that moment you dissolve our national constitution. Every government, and most especially a republican government, is bound to protect each citizen in his property, reputation, and life. How can a republican government do it, but by and through the law rigidly and justly administered? Whenever you dispense with the law, you allow men to arm themselves and to become their own avengers, independent of and above all law. When they are not only permitted to do so, but to return home as innocent men, what is the effect? Every man will arm himself, and, like the turbulent and the licensed armed mobs at the fall of the Roman republic, brutal violence will reign instead of law. All government will be dissolved, and anarchy and confusion will pave the way to usurpation and tyranny. You must venerate the law if you would not see such a state of things. If you do not, A and B will arm themselves, like the Turk, up to the throat, and kill whom they please out of mere wantonness and sport.

"If you go into the Northern States, it is a rare thing that you can find a man in ten thousand with a deadly weapon on his person. Go into other States that shall be nameless, and you will hear of them as often as of corn-shuckings in an Indian summer. Go further South—to Arkansas or Mississippi, for instance—and though you would be a peaceable man, shuddering at the name of a 'tooth-pick' in the North, in these States you may arm yourself to the teeth, and track your steps in blood with impunity. Why is this, but from the relaxation of the laws that are elsewhere enforced and obeyed?

"I was down the river lately, and it was pointed out to me where the Black Hawk had blown up and killed her scores; to another place where the General Brown had blown up and killed her hundreds; to one spot on

the shore where two gentlemen blew each other's brains out with rifles; to another, where the widow somebody's overseer was butchered; to another, where the keeper of a wood-yard was shot for asking pay for his wood; to another, where an aged gentleman had his guts ripped out for protecting his slaves from cruel treatment. 'Great God!' cried I, at last, 'take me back! take me back to where there is more law though less money;' for I could not stand the horrid recital any longer, when every jutting point or retiring bend bore the landmark of assassination and irresponsible murder.

"Why does the law call for punishment? Surely it is not in vengeance for the past, but to deter others from the too frequent and free use of deadly weapons, whether in Kentucky, Louisiana, Mississippi, or Arkansas. Is it to be left to the vitiated taste of the brutal few to give tone to the mind of a community in setting up the code of the bowie-knife against the common law? It was but the other day that in the Legislature of Arkansas, a member on the floor was a little disorderly, and the speaker, to keep quietness, stepped down, brandishing his bowie-knife, to silence the ardor of the unruly member, which he did effectually; for, of all the ways in the world of putting down a young and aspiring politician, whose tongue will keep wagging in spite of his teeth, your bowie-knife is, I admit, the most effectual. And the speaker, on this occasion, bent upon having silence, silenced the offender, not only then, but for all time to come. To be sure, he went through the form of a court of inquiry, but a life is only a small matter there, and he was acquitted according to the laws of the State.

"'Coming events cast their shadows before,' and here we have one symptom of the downfall of our glorious Republic, which has been so often predicted, but which has been reserved for the present generation to consummate. The symptom is to be found in the flash of those deadly weapons carried about and used with such unerring fatality by our legislative sages and judicial dignitaries. As if the next should come from high places, too, we have a fatal symptom of our downfall furnished by the corruption of those in office, who share in or connive at the grossest defalcation—the widest system of public plunder, even in our monetary defalcations, ever known in any government.

"Why should we deceive ourselves with the vain hope that our Republic will boast greater permanency than that of Rome, when we are fast falling into the very track, step by step, which leads to the precipice over which she plunged headlong? That once magnificent mistress of the world, marching up the hill of fame and glory with irresistible strides, till she at last reached the summit, and looked around upon the hundred nations in her rule. But, at last, satisfied with prosperity, she began to repose supinely upon her laurels, and she permitted herself gradually to relax that discipline and good order which had been to her not only her shield and buckler, but her bond of union. The people were permitted to fight in twos and threes,

at first, with impunity. They became accustomed to it, and then fought without interruption in gangs; by and by, mobs fought with mobs; and, finally, the whole people became arrayed against each other in regular armies, till they had to retire to the plains of Pharsalia, where the doom of the greatest republic the world had ever known was sealed forever.

"Are we not relaxing the laws—which leads to anarchy, and from personal violence to popular usurpation? Are we not relaxing our financial vigilance—which leads to corruption at the fountain head, and from private peculation to public defalcation? Is there no symptom in all this of a great crisis? I tell you again and again, when you can lay your hands on great delinquents, make them an example; when you can grasp great defaulters, punish them; then will you more easily check pernicious discords, and restore to its proper tension and tone the harmonizing power of your laws and your government. Whenever you see men wearing bowie-knives and daggers—hunt them down as you would bears and their cubs, from whom you can expect nothing but injury. The whole State of Kentucky looks to you this day for justice, for this is an awful investigation concerning the loss of two of her citizens. Two of our fellow-citizens have been murdered, and these gentlemen stand here to answer for it. Some of the best blood of the country has been spilled as if in the pen of slaughtered hogs; but because the relatives of one of these butchered men employ counsel to aid in the prosecution in developing the truth and guarding against the delusions of sophistry from the greatest array of talent the country can boast, or that wealth unbounded can procure, to elude the punishment due to the offended laws, you are told to take but a one-sided view of the evidence, and decide, at any rate, against the paid advocate. I have not asked these gentlemen what they are to be paid for eluding justice, because I did not consider that a sort of evidence which ought to influence your verdict.

"Gentlemen, one question is, are we to tolerate this bowie-knife system under the pretense of self defense? I say, let your verdict act like the ax laid at the root of the tree, and many a prayer will bless you for your timely check of its growth. Many a woman is made a mourning widow, many a child made a pitiable orphan, and many a father childless by the use of this accursed weapon. You have it in your power to prevent the recurrence of such scenes.

"We have had an exhibition here in miniature of those Roman scenes which prepared the public mind for the downfall of that great people. There was a vast amphitheater where the Roman people could be crowded together, and, in the presence of some hundred thousand persons of both sexes, a man would be brought into the arena and a ferocious tiger turned in upon him. He might or he might not possess skill or courage to meet the formidable beast and evade the deadly spring; but, if not so fortunate, when the tear-

ing of his vitals were seen, and the craunching of his bones heard, the solitary shriek of the victim's wife, as it arose upon the air, would instantly be drowned by the acclamations and thunders of applause bestowed upon the ferocious beast, prolonged by its renewed efforts to suck the blood, tear the flesh, and grind the bones of its prey. As we have no amphitheater, a hall of justice is made to answer for a miniature arena; and as we can not have tigers, nor men who will submit to be their victims, we have forensic gladiators, and witnesses whose private feelings and characters may be wounded, lacerated, and tortured to the infinite delight and encouraging shouts and plaudits of a fashionable auditory, while the victim is helpless and gloomy in his unmerited prostration. Yes, it is all for the amusement of enlightened minds, and it is intended, perhaps, for the edification of the rising generation. But, I protest, I can not perceive that it is any more for the honor of the applauders than it is necessary for the good of the country that these gentlemen should be honored and glorified for their dexterity in the use of the bowie-knife and dirk.

"In the time of public danger or foreign invasion, is it these bowie-knife gentry, these pistol men in private life, that mount the breach and face the danger? Are they the brother Jonathans that face John Bull and eye him and his scarlet coats with defiance? Where are they, then? Why, like the gnats and mosquitoes, who glisten in the sunshine and calm, but, when the storm rages, and the thunder growls, and the lightning flashes, and the earth is rocked to its center, they are stowed away from the danger, though they are sure to emerge from their hiding-place to annoy with their stings when the succeeding calm and sunshine invite them out once more. Brave men may be voluptuous and effeminate in private life, but, in the hour of danger, they put on a new nature. But these fighters in time of peace clothe themselves in the skin of the lamb in time of war. Sardanapalus, who sat all the while with his women and eunuchs in times of peace, spinning and knitting, and telling long stories, no doubt, and sometimes wearing petticoats to make himself more effeminate, when conspired against by Belesis and Arsaces, gave up his voluptuousness, and, at the head of his army, gained three renowned battles, and, though beaten and besieged at last in the city of Ninus, to disappoint his enemies, burned himself, his eunuchs, and his concubines, with his palace and all his treasures. Alexander the Great, who was kind and courteous, familiar and confiding with his officers in private life, when leading the Macedonians, moved to battle like a pillar of fire, irresistible in his might. When the great Frederick led on his brave Prussians, they fought and fell and fought and fell, as long as any were left. And thus men imbibe the spirit of their chief. If led by a brave man, they are brave; but, if led by a coward, they are poltroons; and, if led by the bowie-knife and pistol gentry, I make no doubt that they would be either assassins, or nothing better than mosquitoes, to be dispersed

by the first report of the cannon. Even at home, in our own rural districts, we see the influence of leading men on whole neighborhoods. Let a virtuous and enlightened man, whom all will look up to as a pattern, settle in your neighborhood, and every one will partake of his good influence.

"Why was it that Nelson, in his death, did more for the glory of his country than he ever did in his life? Because he ascended to heaven in the arms of victory, like Elijah, who tasted not of death.

"Let us never dream of selecting for our leaders or examples those who have so little moral courage as to trust to bowie-knives and pistols for the preservation of their manhood, instead of to their blameless conduct in peace and bravery in war.

"Gentlemen, I beg of you, in the name of Him who sits upon the cloud and rides upon the storm, mete out the measure of justice to these men and vindicate the honor of Mercer county. But do not stigmatize your county by doing, as Mr. Prentiss would have you to do, by shouting 'Glory! glory! go, ye righteous; go to your homes in honor and innocence.' Whatever you may do, I shall content myself with the conviction that, in my professional capacity, I, at least, have done my duty.

"I have been deputed by the widowed mother of the murdered Rothwell, and at the instance of his mourning sisters, to implore your justice. I have closed my mission. Between you and your country, between you and your God, I leave their cause."

The following interesting reference to the argument is from the pen of Dr. C. C. Graham, who witnessed the trial:

"Judge Rowan (who, by the way, read his speech to the jury from the manuscript) from age let down, and so did Colonel Robertson. Mr. Hardin, though of the same age, retained all the memory and vigor of mind for which he was so remarkable, and forced upon the jury all the convicting law that ever was written, and, like a bull-dog, clinching his fangs upon every vulnerable point, making all that any mortal man could out of the case. At the close of his powerful argument whispers were heard all around, 'The jury is bound to convict.'"

Judge Rowan followed Mr. Hardin, and Mr. Bullock concluded the argument. The jury retired for the space of fifteen minutes, and at the end of that interval returned into court with a verdict acquitting all the defendants.

With the mass of those who heard the trial, the speech of Prentiss undoubtedly bore the palm. Yet the late Dr. John C. Young, the accomplished President of Centre College, was present, and not a few would prefer his discriminating judgment to the thoughtless plaudits of the multitude. He said that "Prentiss furnished the tinsel

while Hardin supplied the bullion of the argument." Shields, the biographer of Prentiss, characterized the speech as Hardin's "greatest effort." Rowan spoke of it as being "as remarkable for vigor of intellect as for vehemence and impassioned zeal."

The citizens of Harrodsburg had been in warm sympathy with the Wilkinson party. That sympathy deprived Mr. Hardin during the trial of those courteous attentions which his age and reputation entitled him to expect. Prentiss was the hero of the hour.

Hospitality turned her "cold shoulder" to Hardin. He smarted under the studied neglect with which he was treated. Mounting his old gray horse in front of the hotel to start home after the trial, he dropped an observation to an unsympathetic crowd standing by which was afterward remembered with bitterness of soul in that corporation. Mercer county (of which Harrodsburg was the seat of justice) then embraced the town of Danville, and the rich and fertile territory subsequently included in Boyle county. Danville had long sought to establish a new county, which Harrodsburg had vigorously opposed. It so happened at that time that Mr. Hardin had two influential sons-in-law in the Legislature.

"I will see," said he, reining up his horse, "I will see that John Helm and Dr. Palmer run a stake and ridered fence between here and Danville." In performance of that threat or fulfillment of that prophecy it so happened that in a year or so afterward the Legislature carved the county of Boyle from the very heart of Mercer.*

* Judge Wilkinson died in 1860, and side by side in the Roman Catholic cemetery at Bardstown he and his wife sleep well "after life's fitful fever."

CHAPTER XXIII.

SOME CELEBRATED CASES.

IN the course of his long and busy career, Mr. Hardin was employed in many cases that might with propriety—on account of their character, the questions involved, the array of counsel, or the importance of their results—be set down in this chapter. These cases, taken together, involved well nigh every question usually litigated in tribunals removed from the seaboard, where maritime interests are in question.

Land law, commercial law, constitutional law, criminal law, etc., were some of the subjects daily investigated and expounded by him in the course of practice. The reports of decisions of the Court of Appeals of Kentucky not only show him to have been a regular practitioner before that tribunal, but many of the cases very entertainingly illustrate his skillful, diligent, and profound lawyership. But these cases can not be even enumerated here. As a specimen the curious reader will find the case of Rust against Larue, etc., reported in 4 Littell's Kentucky Reports, page 411, interesting and instructive. In a petition for rehearing, Mr. Hardin examines and discusses very exhaustively, and forcibly combats that phase of the doctrine of champerty, which avoids contracts between client and attorney, by which the latter is to receive part of the matter in controversy for his compensation.

It is not intended, however, to even allude to the many noted cases in which he was engaged from time to time. Four of these, dissimilar in character, have been selected, in each of which he was leading counsel, and in all of which he distinguished himself for lawyership. A brief sketch of each will be given.

GREEN VS. BIDDLE. SUPREME COURT OF UNITED STATES.

This action arose in Kentucky about 1820. Green sought to recover certain lands occupied by Biddle, and the latter, claiming for improvements, the constitutionality of two acts of the Legislature was drawn in question. The acts referred to were passed in 1797 and in 1812 respectively and were intended for the protection of occupy-

ing claimants of lands under a title of record, when ousted by superior title. It was provided that in case of eviction the tenant should not only be entitled to recover the value of all improvements placed upon the land, but should only answer for rent from the time he had notice of the superior title. Mr. Hardin was of counsel for Green. He denied the constitutionality of the laws in question because in contravention of the "Compact with Virginia."

This "compact" was part of the first, as it has been of the second and third Constitutions since adopted in Kentucky, and in effect provided "that all the rights derived from Virginia prior to separation should continue valid and be governed by the laws then existing in that State."

Green derived his title from Virginia prior to 1792, and claimed that his rights—being secured by the "compact"—could not be taken away or diminished by the "occupying claimant" laws above alluded to. The case began in the federal circuit for Kentucky—the judges of which divided equally on the aforenamed constitutional questions; it was carried to the Supreme Court. It was first argued at the February term, 1821, by Mr. Talbott and Mr. Hardin for Green, no counsel appearing for Biddle. Justice Story delivered the opinion of the court holding the occupying claimant law unconstitutional. After this decision was pronounced, Mr. Clay, as *amicus curia*, moved a rehearing on the ground that but one side had been represented by counsel, and that the question involved was vital to many citizens of Kentucky. The motion was granted and the case continued until another term. Meantime, the Legislature of Kentucky, regarding the question of public interest, employed Mr. Clay and Judge Bibb to maintain the constitutionality of the disputed law.

In 1823 the case was again argued before the Supreme Court by Mr. Hardin and Mr. Montgomery for Green, and by Messrs. Clay and Bibb contra. The briefs of counsel are published with the report of the case, and are very elaborate.* Mr. Justice Washington delivered the opinion of the court, Mr. Justice Johnson delivering a separate opinion. Both concurred in the decision previously pronounced. The court, in reply to the point of Mr. Clay that the "compact" was not binding because not ratified by Congress, held otherwise, declaring that it was a contract between the two States and was valid as such.

Messrs. Clay and Bibb received a fee of four thousand dollars from the State treasury for their services. Mr. Hardin argued the case

*See 8 Wheaton, page 547.

orally. Governor Pope, himself a most excellent lawyer, was present, and pronounced Mr. Hardin's one of the finest legal arguments to which he had ever listened, saying it was as pure and clear as an icicle, and quite a contrast in that respect to some of his jury speeches. Judge Rowan and Mr. Clay sought still another rehearing, but it was denied.

At the period (shortly after this decision) when the Legislature was denouncing and preparing to overthrow the Court of Appeals for holding the relief law unconstitutional, the latter as well as the Supreme Court of the United States received the following euphonious rebuke in a preamble to certain resolutions offered in the Legislature, evidently the composition of Judge Rowan:

"The Appellate Court of the nation and State (by consentaneous impulse), as if in the view to exemplify the illusive nature of hope and the fallacy of the fairest prospects, uttered their respective edicts. The former proclaimed that the State of Kentucky possessed no legislative dominion over its soil; the latter, that the Legislature of the State possessed no power to alter, amend, or modify its remedial laws. The former having disfranchised the State and reduced it to the degraded posture of a province of Virginia, the latter denies to it even provincial legislative powers."

It is proper to mention in this connection that so far from the State being reduced "to the degrading posture of a province of Virginia," its sovereignty was vindicated in the most emphatic manner. When the mandate of the Supreme Court was offered to be filed in the Court of Appeals, the latter tribunal refused to allow it. It was disregarded there, and so the constitutionality of the occupying claimant laws was happily (although somewhat uniquely) placed beyond all cavil or question; and, moreover, demonstration was given of how infinitely superior in majesty is the court of a sovereign State to that of a government exercising mere delegated powers.

In that great controversy in Kentucky, known as the "old and new court contest," which raged with great fury from 1823 to 1825, the New Court party, in the expressive vernacular of the legal profession, pleaded the decision in Green against Biddle "in aggravation of damages." But it was a circumstance that hastened the overthrow of that party, that it had undertaken to condemn in popular opinion not only the Court of Appeals, when John Boyle was its chief-justice, but also to bring to obloquy the Supreme Court of the United States, when that greatest of all American jurists, John Marshall, adorned that high tribunal.

Deparcq vs. Rice, Libel, Nelson Circuit Court.

Few cases ever produced more excitement, or attracted more widespread interest, than that of Deparcq against Rice, tried in 1836. In 1858 the following statement was published by Dr. Rice, in the *Presbyterian Expositor*, as to the origin of the law-suit, which he entitled "The Mysterious Disappearance:"

"Some twenty years ago, a young woman, the daughter of Roman Catholic parents, entered a nunnery not far from Bardstown, Kentucky. She at first entered as a pupil, but after some time she was induced to take the veil, and entered upon what was regarded as a religious life. After she had been from twelve months to two years in, perhaps, two nunneries, she suddenly threw off her religious habit, and returned to her father's house. This unexpected step surprised her parents, and they demanded her reasons for abandoning the convent. Knowing their superstitious veneration for the priesthood, she hesitated to reveal her reasons, unless in the presence of some two Protestant neighbors. This her father refused to permit, and sent for a married son and his wife, who were not more intelligent than himself, and were equally bigoted. The daughter stated as her reasons for leaving the nunnery, the licentious conduct of the presiding priest, and the prevalence of corruption in the institution. When she entered the convent, she regarded it as the gate of heaven; now, she viewed it as the gate of hell.

"These statements, so far from satisfying her superstitious relatives, excited their highest displeasure, and, discovering that she was likely to be roughly handled, she fled to the house of an aged Baptist minister about a mile distant. From childhood she had known him and his family. To them she related her story, and begged their protection. She desired to state the facts under oath, and the minister prevailed upon a neighboring magistrate to go to his house and hear what she had to say. Unwilling, however, to excite the enmity of his Romish neighbors, he declined administering the oath.

"The young woman remained several months in the neighborhood, spending her time in different families. Of course, the revelations she made soon became a matter of conversation among the people, and the indignation of the more zealous Papists was excited against her, and threats of violence were heard. Soon she disappeared from the neighborhood, and nothing more was heard of her. The magistrate, in whose family she had spent several weeks, made inquiries of her father respecting her, but received an evasive answer. Some years afterward, he was called to write the old man's will, and, observing that he did not mention the name of his daughter, he ventured to ask him whether he did not intend to leave her anything. He answered that he supposed she was dead.

"This mysterious disappearance awakened in the minds of those who had known and respected the unfortunate young woman strong suspicions that she had fallen a victim to priestly vengeance. About the summer of 1834 the magistrate related to us the facts, and freely expressed his suspicions. In May, 1836, in reply to some queries addressed to us by the Rev. Dr. Brownlee, through the *Protestant Vindicator*, of New York, we published the leading facts, omitting the names of the parties, which, indeed, we had forgotten, in the *Western Protestant*, of which we were then editor. Soon after we received a letter from Rev. George A. M. Elder, then President of St. Joseph's College, calling for names and particulars. The character of the letter sufficiently indicated the purpose to institute against us a civil suit for libel. Knowing, however, that what we had published was literally true, we laid before the public all the material facts together with the names of the parties. As we anticipated, a suit was instituted for the character of the presiding priest, and damages were laid at ten thousand dollars."

Rev. David Alexander Deparcq was the presiding priest, whose character was thus impugned. He was of French lineage, and had come to the United States about the year 1818. He was pronounced by one who knew him to be of the class of priests known as workers. Whatever was of duty first claimed and received his attention; but this term included for him the exercise of every power for good with which he had been endowed by heaven. He was charitable both in word and action. As a preacher, he spoke well, his sermons being both short and practical. Among the virtues attributed to him it was said he was just, impartial, truthful, most forgiving of injuries, and most tender toward repenting sinners.* Father Deparcq was in Europe at the time the aspersions on his character were published, but at the instance of Rev. George A. M. Elder, then President of St. Joseph's College, an action was instituted for libel.

Dr. Rice, the defendant, was a native of Kentucky, the son of a Garrard county farmer. He obtained an education under difficulties, was several years a student at Centre College, and entered the ministry of the Presbyterian church in 1828, in his twentieth year. As a preacher, teacher, editor, writer, and debater, he early became eminent. He was noted, notwithstanding infirm health, for energy, industry, and fortitude in difficulty. His first pastoral service was at Bardstown, where he established a female academy and founded a newspaper called the *Western Protestant*. His taste for controversy, and rivalry between the school established by him and similar Catholic institutions, were circumstances by no means favorable to the existence of

*Catholicity in Kentucky, by Hon. B. J. Webb, page 243.

cordial relations among the different religionists at Bardstown. In fact, Dr. Rice regarded his claim to the patronage of Protestants as a superior right, and resented its invasion by Catholic teachers. This condition of affairs may have caused him to listen too implicitly to the statements of the nun, and vouch for them too confidently. The array of counsel on both sides of the case was remarkable for character and ability. For Deparcq appeared John Rowan, Ben Hardin, Ben Chapeze, and Geo. W. Hite, while Rice was represented by Charles A. Wickliffe, John J. Crittenden, Nathaniel Wickliffe, and T. P. Linthicum.

That the young woman had been an inmate of a nunnery and afterward had renounced her vows, and that she had assigned the reason therefor as stated by Rice, seem to have been established. But her statements as to the licentious conduct of the priest lacked corroboration, and, besides, evidence was offered tending to show her to have been insane. She had mysteriously disappeared from the neighborhood where she had resided for several months after returning to the world. Some evidence was offered to show that she was subsequently seen in the State of Indiana. Some one answering to her name had undoubtedly taught school in that State, but a dispute as to identity and capacity to teach school somewhat weakened this evidence. While the insinuation was freely indulged that the priesthood had either procured or connived at her abduction or murder, yet there seems to have been no other ground for it than the mere inference from the supposed interest that body had in closing her mouth.

The suit was pending a twelvemonth before it came to a hearing. The trial consumed a week, and was ably and skillfully managed on both sides. The court-house at Bardstown was packed during its progress. The Catholic bishop and some twenty of the priesthood were present, no doubt deeply interested in the proceedings, though Dr. Rice says, "to overawe the jury. That their cause was ably managed," he continues, "there could be no doubt. Every advantage was taken which legal technicalities could afford, and the strongest appeals made to prejudice and passion."

"The last argument I remember to have heard from Mr. Hardin," says Hon. B. J. Webb, of Louisville, "was in the case of Deparcq vs. Rice, for defamation of character. I was publishing a newspaper in Bardstown at the time, and it was while listening to Mr. Hardin's triumphant argument that I determined, if I could but get him to furnish me with a report of his speech, that I would publish an account of the trial in pamphlet form. I

called upon him afterward and preferred my request, which he willingly conceded. He did furnish me with some twenty or twenty-five pages of manuscript, which I put in type, and of which I brought him the proof. He never returned the proof, and to my repeated notes of request for the remainder he never vouchsafed me a single line of answer. He found, I suppose, that the publication of his speech would compromise him with certain of his friends, and hence preferred to do me an absolute injury than run any such risk. He did me, as I then thought and still think, a grievous wrong, for which he never proffered me the slightest apology. As I grow older, however, I increase in charity for those who are bothered at times with their chirography. Mr. Hardin's handwriting was about the worst I ever attempted to decipher." *

To many persons the most distasteful of tasks is to write one's own speech—after delivery. When the inspiration of the hour has passed, and the burning words and breathing thoughts have grown cold, the mental palate is affronted when an attempt is made to reproduce the extempore banquet. Of the hundreds and thousands of speeches made by him, few were those Mr. Hardin ever wrote out. His penmanship was exceedingly laborious, and in disappointing Mr. Webb he may have been less culpable than supposed. It is agreed by all who ever heard him that no report ever did justice to his speeches. There were fugitive strokes composed in part of thought and part of manner which no pen could reproduce.

The verdict of the jury was for the priest for one cent in damages, a result, in view of the nature and circumstances of the controversy, that may be regarded as fortunate. A verdict for a nominal sum was quite sufficient to vindicate the plaintiff's character, while it left the defendant's friends ground to infer that he had acted without malice. The excitement and asperity generated by the trial long continued a disturbing element in the region where the controversy arose, and the slightest allusion to it caused a sensation. It is related that Rev. William Downes, an eccentric Baptist preacher of the Green river country, noted for controversial talent, once met a Catholic priest in debate not long after this trial occurred. Each disputant was maintaining the superiority of his creed. The priest lauded the Catholic church because it forbade its members to join secret societies. Free Masonry was especially denounced, because of its wickedness and for its supposed responsibility for the murder of Morgan, who had divulged its secrets. This order was unpopular at that period and in that locality with all classes, and it was with a feeling of triumph the priest turned to his adversary and asked him who killed Morgan? Downes,

* Letter to Author.

in a shrill tone, screamed out that he would do so, if the priest would first tell the audience who murdered Milly McPherson? The excitement produced by this episode abruptly terminated the debate.

The accused and accuser and all the brilliant counsel engaged in that forensic tournament have long since passed to the bar where the secrets of all hearts are revealed to a righteous Judge. The passions and excitement engendered by the controversy have died away and its incidents have been almost forgotten. The increasing amenities of modern life and the decline of pugnacious Christianity conspire to render it improbable that such a deplorable and peace-disturbing event will ever occur again. But now and then one of that grizzled generation murmurs querulously that the fate of Milly McPherson is still a mystery. So it is and so it must be evermore.

Spencer's Case—Murder.

The case presently to be mentioned finely illustrates some of Mr. Hardin's most interesting and marked characteristics as a lawyer. No one had greater powers of intuition, and his confidence in knowledge and conclusions attained in that way was absolute. It was a kind of knowledge that he felt more strongly than he could support by reasons. The naturalist from the femur bone or even a tusk will reconstruct the skeleton of the megatherium of the antediluvian era with the unerring accuracy of science. So Mr. Hardin, from an apparently inconclusive link, would construct a chain of guilt that could not be broken. The case illustrates (better than the account of it will show) his power to fit and bind together a number of facts—seemingly insignificant and accidental taken separately—yet in combination irresistible in their convincing force. In no State of the Union has public sentiment ever been more potential in the jury box than in Kentucky, yet it will here be seen that he not only defied its power but actually changed its course in the period of a single speech.

In 1842, one Spencer was indicted in the Hardin Circuit Court for murder of a boy—his step-son. Mr. Hardin assisted in the prosecution. It was a case of circumstantial evidence entirely and the trial lasted a week. Spencer was a farmer, living in the Level Woods, whose family consisted of himself, a wife, and her son by a former husband. The boy had been sent a short distance on an errand, on horseback, to a neighbor's house. Not long afterward the horse returned riderless. The mother, alarmed at her son's absence, was starting to search for him but her husband forbade her.

Shortly the body was found dead in the public road with a fracture of the skull. Spencer was arrested, charged with the murder, and indicted by the grand jury. The theory of the defense was that death had resulted from being thrown from the horse, and this was accepted by the public generally as true. So probable was the theory made as to convince Mr. Riley, the prosecuting attorney, of Spencer's innocence. Mr. Hardin had not been employed to prosecute, and while he sat by and attentively listened to the evidence he took no part until its conclusion. The fate of the murdered boy and the atrocity of the deed very greatly affected him, and caused him to volunteer to aid in bringing the murderer to justice. He insisted that he knew the prisoner to be guilty, and based that faith on the latter's refusal to let the mother go in search of her son. The facts in evidence on which he relied to convict were these: The boy's skull was fractured by falling on some hard substance or by a blow. In the vicinity where the body was found and presumably fell, if it had fallen from the horse, there was no hard substance by contact with which the wound could have been produced. So it was argued that the fracture was not from a fall, but from a blow. The next question was as to who inflicted the blow? In that inquiry the first step was to learn who had a motive to do the deed. Spencer and his wife lived together unhappily. The boy was the source of difficulty, and had been mistreated by Spencer, who had not concealed his dislike. Here was a motive. Motive could be traced to no other. Not far from the body a hickory sapling or shrub had been recently cut down, as evidenced by the fresh appearance of the stump, and a few feet of the sapling gone, of size and length to make a dangerous and deadly cudgel convenient for handling. That cudgel was not to be found, but the size as indicated by the stump showed that it could have produced the identical wound on the boy's head. A strong inference (amounting almost to a fact) was that the person who did the killing evidently knew the road the boy would travel and the time he would arrive at the scene of the killing, as it was the only point on the route where the killing could have been done without discovery. Still another point against the prisoner was that about the time the murder occurred he could not account for his whereabouts. He made some effort to show that when from home that day he had been a direction entirely different from the place where the body was found. A few minutes before the horse reached home Spencer arrived with his ax on his shoulder. Tracks identified as his were found entering a field of flax

from the direction of the killing. He had freshly ground his ax that morning and had failed to grind out the gaps. The hickory shrub near the body had been cut with a freshly ground ax, as the stump showed, that had gaps in it. On comparison the gaps exactly corresponded with those in the ax of the prisoner. The prisoner's ax had evidently cut the sapling, and the hand that held the ax had grasped the club that killed the boy. Such was the argument. All this the defense simply denied.

Notwithstanding this corroboration of guilt, Mr. Riley was not converted to his associate's theory, and persisted that the jury would not convict on such uncertain evidence, and that he could not conscientiously ask them to do so. Mr. Hardin told him if he would make some plausible excuse and leave the county, so as not to appear to have abandoned the case, he would certainly convict the prisoner. This Mr. Riley did, and left his colleague to conclude the prosecution alone. The counsel for defense were entirely confident of the prisoner's acquittal. Public sentiment endorsed such a verdict in advance. Mr. Hardin realized the situation, but, at the same time, had the unshaken and abiding conviction of the prisoner's guilt, and a keen sense of the atrocity of his crime. It is needless to say that, in the closing argument, all the powers that were in him, and all the arts of which he was master, were brought into requisition. Every circumstance was arrayed, vivified, and focalized. The defense had rested entirely on its theory of accidental killing. If the jury concluded it was intentional, the prisoner offered no hypothesis as to who did it. Mr. Hardin reduced the case to this simple question: Was the boy killed accidentally or intentionally? If accidentally, the prisoner was innocent; if intentionally, then he, and no one but he, could be guilty. The cruel step-father, the long-suffering boy, the anguish-stricken and distracted mother, the cowardly killing, were topics that were handled to effective purpose. The speech prepared both the public and the jury for the verdict. Spencer was convicted and sentenced to be hanged.

Preceding and subsequent to his trial and conviction, he was extremely discreet. He had enjoyed a fair character in his neighborhood, which had remained unshaken by the charge against him. He persistently maintained his innocence, and his deportment conformed to his professions. Mr. Hardin himself was not a little surprised that he so strongly held out. While convinced of his guilt to a moral certainty, yet he realized that there was a physical possibility of inno-

cence. Growing restless about the case, he resolved to attend the execution. He was anxious to hear the prisoner's last utterances on the subject. Said a gentleman present on that tragical occasion: "Mr. Hardin, myself, Mr. Poston, the sheriff, and a minister of the Gospel, by invitation, rode in the wagon with the prisoner to the place of execution. One of the party suggested to Spencer that, if he was guilty, 'it was needless to speak untruly about it any longer, and that he ought not to leave the world with a lie on his lips.' The condemned man responded that the witnesses who had testified in the case had told the truth; that Mr. Hardin, in his speech, related exactly how the murder was committed, except he was mistaken as to time. He had 'killed the boy half an hour sooner than Mr. Hardin had asserted,' and insisted that some one must have informed the latter as to the details of the killing."

R. Logan Wickliffe's Case—Murder.

One of the remarkable trials in which Mr. Hardin was engaged, remarkable chiefly on account of the social position of the defendant and of the array of counsel, was that of R. Logan Wickliffe, charged with murder. The prosecution was conducted by Nathaniel Wolfe, Esq., of the Louisville bar, at that time considered one of the ablest criminal lawyers in the State. The case was argued for the defense by Mr. Hardin, Thomas W. Riley, George Thurman (of Springfield), and General William Preston, then of Louisville, now residing at Lexington. Mr. Hardin's speech on the occasion was one of the ablest of his life.

Wickliffe was charged with the murder of Pat Gray, a reputable citizen of Bardstown, who was a blacksmith, and, in addition to this pursuit, kept horses for hire. The origin of the affair was purely political, Gray being an enthusiastic Whig and influential in local affairs, while Wickliffe, a young lawyer, was prominent as a Democrat, and was a gifted speaker. It occurred during the campaign for delegates to the constitutional convention of 1849. Mr. Hardin, William R. Grigsby, and Hon. Charles A. Wickliffe were rival candidates, and of the latter the prisoner, a kinsman, was an ardent supporter. Wickliffe procured a horse from a friend to ride to a political meeting a few miles from Bardstown. Gray was present at the meeting and discovered the horse (which he had hired to another) hitched near by. Learning that Wickliffe had ridden it, he indulged in abusive language against him, and ended by leading the horse back to town.

Wickliffe was left afoot, and learning the cause of it indulged in denunciations of Gray. Next day the parties met in town at a bonfire, and Gray grossly insulted Wickliffe. The former was a strong athletic man, greatly the superior of the latter physically. It was reported also that on the occasion Gray indulged threats that he would kill the prisoner if the latter annoyed him.

On the morning of the killing, Wickliffe, being on the street near his father's office, saw Gray on the opposite side, not far from his house. The latter advanced across the street a few paces, in the direction of Wickliffe, whereupon the latter stepped into the clerk's office and picked up a double-barreled shot-gun, which was usually kept there loaded, and, coming out, advanced on Gray. The latter turned, slightly, on which Wickliffe defied him to come on, at the same time firing, inflicting a mortal wound.

A story is told at Bardstown, differing from this, to the effect that Wickliffe had concealed himself, with his gun, behind one of the locust trees that then lined the sidewalk in front of the clerk's office, and on discovering Gray, stepped out, saying: "Look out, Pat," and fired, without other parley or warning. Those locust trees long flourished, save the one that concealed Wickliffe, which soon afterward withered.

The affair excited the fiercest passions of the people. Wickliffe was indicted by the grand jury for murder, but on account of party heat and the difficulty of obtaining an impartial jury, the case was removed to Springfield, where the trial occurred. Popular feeling against Wickliffe was very great in Nelson county, and apparently not less so in Washington, to which the venue was changed.

The trial came on in the year 1850, Judge Samuel J. Lusk presiding. An effort was made in the course of the trial to introduce the dying declarations of Gray, to the effect that he had borne no ill will against the prisoner, and did not know why he killed him, which the court allowed, against the prisoner's objection. The latter had offered to prove, on cross-examination of prosecuting witnesses, the threats of Gray at the meeting, and at the bonfire, but this was refused, because there was no proof that they had been communicated to the prisoner. This refusal seemed to turn the tide in favor of Wickliffe. The point was made, in argument to the court, that it was unfair to admit the statements of deceased on one occasion, to convict the prisoner, and on the other hand, exclude those in his favor, made on another occasion. Afterward, the court reconsidered this latter ruling

and allowed the whole testimony, on the ground that the previous threats of deceased were competent to contradict the dying declaration. With this evidence before the jury, it appeared that there had been many threats on both sides, and each party was abundantly notified of the angry state of feeling of the other.

Perhaps no man in the State ever exhibited more talent than did Mr. Hardin in this case. Mr. Wolfe, who opened the argument, had made a most profound impression on the jury. He had alluded pathetically to the bereaved widow and children of the deceased, and had also made with great effect the point that the prisoner was an aristocrat—of an aristocratic family—who had no regard for the rights of a laboring man, etc. Mr. Hardin began his speech by instituting a comparison between Mr. Wolfe and Phillip York, afterward Lord Hardwick, and spoke of how he had risen to the highest round in the profession and his name as a prosecutor had become a terror throughout England. Mr. Hardin spoke of the fears which had been created in his own mind on account of Mr. Wolfe's great abilities.

"I had been applied to to defend Wickliffe and had promised to do so, and for that purpose had reached Bardstown the Saturday evening before court on my route to Springfield. I had just returned from Brandenburg, very much wearied by my long ride—made more fatiguing by having led a horse, which I had secured as a fee at the Meade court. As I came into my front yard, leading the horse, my little grandchild ran out to meet me. I dismounted, and without waiting to kiss me, she threw her little arms around my knees and her first exclamation was: 'O, grandpapa, did you know that Mr. Wolfe had come to town?' Tired as I was I answered as softly as I could: 'Well, my dear, what of that?' She answered: 'They say Mr. Wolfe is the greatest lawyer in Kentucky and that he is sure to hang Logan Wickliffe.' This agitation of the child discomposed me very much; however, I took my horses to the stable and put them away and returned to the house. It was about five o'clock in the evening, and of course the dinner hour was past. My wife, who was expecting me home, had set out a dish for my dinner, which was cold, it is true, but of which, as she knew, I am extremely fond—jowl and snap beans I sat down at the table feeling exceedingly hungry, and picked up my knife to help myself when my wife, who at the moment was pouring me a cup of coffee, observed: 'Mr. Hardin, did you know that Mr. Wolfe has come to town?' I had thought I had more self-control, but it took away my appetite in an instant. Pushing aside my plate, and rising from the table hastily, and I fear impolitely, I said: 'Good God, Betsy! can't a man eat his dinner in peace, even if Mr. Wolfe has come to town?'

"I left the table with no appetite at all, and went out under the Lombardy poplars in my front yard, when my daughter, Mrs. Helm, who was visiting my house, came out and joined me. Said she: 'Have you heard the news?' Said I, still somewhat ruffled from loss of my dinner, 'What news?' She replied: 'Mr. Wolfe has come to town with a barouche filled with law books, drawn by four horses.' Hearing this irritated me to such an extent that I said, 'Pshaw, my dear, don't trouble me about Mr. Wolfe.' I immediately left my home, and, after walking about four or five hours, I returned more composed, and went to sleep without saying anything more about it, feeling that I had controlled myself, and also that I would be able to do so in any emergency.

"It has been my custom, usually, not to pay much attention to my dress or beard just in my ordinary practice, but I am very particular about these matters whenever I have an important case like the present. Now you can see, gentlemen, that I have not shaved for three days, and I feel that I owe you an apology, but the fact is having lost the use of my right arm by a tree falling on my hand many years ago in a coon hunt on Beech Fork, I can not shave myself, and have to rely on a barber. There is an excellent barber in Bardstown who has a sign which looks as if it were modeled after the pattern of a stick of peppermint candy, having alternately red and white stripes up it which is the immemorial badge of that honorable and useful profession, derived from some mythical origin in the time of the Greeks and Romans. It was Sunday evening, and beyond the time when they ever shave customers. But I am accustomed on such occasions to go around to the back door, and the colored barber always knows my knock. Just as I reached the door I paused, attracted by a lively conversation going on within, and I confess that I was tempted to eavesdrop. Three or four colored men were discussing the approaching trial with great animation. My friend, the barber, had just concluded an elegant argument to the effect that this jury would certainly acquit Logan Wickliffe. This position was vehemently denied by three of his friends who insisted that he would certainly be convicted and hanged. The chief authority for this deplorable prophecy was the colored preacher. Meantime, I was an attentive auditor outside waiting to find out what the verdict of the barber shop would be The preacher was very animated in urging his views. He quoted several texts of Scripture much to the point, and, after a very logical demonstration, he said: 'And more and mostly of all, they have raised and paid two thousand dollars to prosecute Logan Wickliffe, and they have brought Mr. Wolfe, the greatest lawyer in Kentucky, to prosecute him, and if there is, in my judgment, anything certain in this terrestrial life, Logan Wickliffe is just bound to be hung.'

"Hearing this conclusion of the whole matter, I gave up, and fled in silence. I said no more; having told you this true story, I am here before you, gentlemen of the jury, in a most pitiable condition."

Early in the argument, Mr. Hardin referred to the false education that the prisoner had received as to personal responsibility and personal duties under unmerited affronts. This he traced to his parents who were the earliest settlers of Chaplin hills and the Beech Fork, and said that nearly every man in the court-house had grown up and known them from the days of the early pioneers until that time.

"Wickliffe," he continued, "was not of a vigorous frame, but of a high spirit and high intelligence. He had been charged with being of an aristocratic family. He was not to be censured on account of the distinction of his family, nor could the wretched notion of an aristocratic example be charged. If he had family pride, he had reason for it from the long and many services of the Wickliffes to the people of Kentucky in its councils and in its wars, and it would be the basest ingratitude for the jury to testify their consideration for the family by putting one of its sons to death."

Having ingratiated himself with the passions of his auditory, he referred to the statement of Gray on his dying bed, that he had never intended to harm Wickliffe. Mr. Hardin accused him of perjury in the last moments of his life; that, although he was a member of a church, yet he was one of the most violent men in the State, and most powerful physically. He sought to bully a weaker adversary, and was armed with a deadly weapon, and tried to provoke a difficulty with the intention of killing Wickliffe; he had advanced on him next morning after breakfast with the same fell intent; he had driven Wickliffe into the clerk's office, and thought he had disgraced him, but it was a dreadful mistake.

"Such a man should beware when a gentleman retreats under insult and without complaint. Seizing the first weapon he could find, Wickliffe reappeared with the fixed resolution that he would be bullied no longer, and that either he or Gray should die. Their meeting, therefore, was to be treated as a mere duel, not a murder. It was a duel on full notice, in which each man was allowed to act at his own pleasure as to time, place, and weapons."

This is but a short and imperfect sketch (says General Preston, to whom the author is indebted for it) of the speech, which at times was marked by episodes of singular humor and affecting pathos. The parallel between Lord Hardwick as a prosecutor and Mr. Wolfe was oddly-conceived and so comically consistent that the judge, jurors, and audience were unable to restrain their mirth, to the evident embarrassment of the eloquent prosecutor from Louisville, who grew angry and asked the court if that was a proper way to conduct a criminal trial, and if it were proper license to indulge counsel in such com-

parisons? Mr. Hardin respectfully halted to give place to objections, and promptly said if any wrong were done Mr. Wolfe or his sensibilities in comparing him to Phillip York, afterward Lord Hardwick, he had not intended it, and regretted it deeply. The peals of laughter produced by the apology, which was unobjectionable in its fullness, and the manner in which it was made, overcame the effect that Mr. Wolfe had produced upon the jury. This diversion won the case.

Mr. Hardin said in course of his speech that Mr. Wolfe must not be disappointed if he failed to obtain a verdict of guilty from that jury, for, indeed, he had noticed that he seemed to be a little hoarse, no doubt, the effect of a cold (or, at least, such was the rumor), which, of course, had greatly impaired the effect of his speech. The farmers of Washington county were possessed of fine sense and taste, and it was always a rule with them in a horse trade to have nothing to do with an animal at all touched in the wind. The gentleman reminded him of a young lawyer that George Thurman wanted to take into partnership, who, after graduating at the University of Virginia, came to Springfield and put up his sign and opened an office. He had begun to receive considerable patronage, when, suddenly, he took down his sign and announced his purpose to remove to Louisville. The tavern-keeper with whom he boarded, unwilling to lose his patronage, remonstrated against removal, saying that if he had any difficulty about money matters that he could board at his hotel and he would indulge him in the payment of his bills until he made the money. The young man thanked him, but said that he could not alter his determination; that he was afraid that on account of the frugality of the county court he would, if he remained, ruin his voice, and that no man could ever produce the proper effect on the jury, in his judgment, in a court-house that was not plastered. (The court would now and then interrupt these episodes, admonishing Mr. Hardin to confine himself to the case, but the latter, after flourishing his bandana handkerchief and assuming an air of much deference, and pressing his thumb on one side of his long, flexible nose, never allowed the merriment to abate, and the court had a suspicious way of covering his mouth with his handkerchief and turning red in the face, that belied his cries of "order.")

He quoted a song of Eric the Norseman or some Scandinavian ditty—alluding to Mr. Wolfe—to the effect that the path of his glory was terrible, being lined with the faces of dead men on swinging gibbets, and that long lines of vultures marked the way of the hero. It required only fifteen minutes for a verdict of "not guilty."

CHAPTER XXIV.

AT THE BAR—WITH POLITICAL INTERLUDES.

DURING the period commencing with the termination of his congressional career, in 1837, and extending to the time he became Secretary of State, in 1844, Mr. Hardin held no public office, and was a candidate for no position save that of presidential elector, in the last named year. He was never more actively employed, professionally, and never with greater profit, both pecuniarily and in reputation, than during this interval. Without abandoning his practice at home, he annually visited the State of Mississippi, and became a regular practitioner in its courts, whence he derived a valuable income. One of the celebrated cases of his career occurred in the course of his Southern practice—Vick's heirs against Lane, etc. Sergeant S. Prentiss was a party to the case, and practiced it in opposition to Mr. Hardin. Prentiss won in the court below, but the case was taken to the Supreme Court of the United States and reversed, and thus he unluckily lost his fortune. Outside of Nelson, he was a regular attendant on the courts of many neighboring counties. He attended the semi-annual sessions of the Court of Appeals, at the State capital—his retainers there, however, usually being in cases in which he had been counsel in the courts below.

The routine of a busy lawyer's life is not a little monotonous. Its most stirring events are those important cases that excite public attention and interest. The Wilkinson case, and many others hardly less tragic in character, though less famous, occurred during this period. The history of important cases is very much the history of the lawyers engaged in them. The details of one case are strikingly similar to those of another and of all, and the work of one lawyer is much like that which another performs. The labors of a weak lawyer outwardly differ little, save in argument, from those of his stronger brother—results chiefly distinguishing between them.

Mr. Hardin, like most lawyers of his time who rode the circuit, traveled horseback, carrying with him such changes of clothing as the period of absence from home demanded. He had his stopping-places on the journey and his lodgings at his destination to which he had

been long accustomed. He always found himself engaged, on his arrival, with causes and clients. He fell to work without delay, subordinating comfort, rest, and social enjoyment to business. As soon as his engagements ended for the term he lost no time in departing—going home or to another court. His practice was not unlike a civic warfare maintained for his clients. The enemy encountered and overcome on one part of the field, he hastened to meet antagonists at another. The excitement which he felt was similar to that which spurs the soldier; the practice of law with him was the ruling passion.

This busy life, however, did not engross his entire thought and labor. At a celebration in 1841, at Harrodsburg, of the sixty-sixth anniversary of the settlement of Kentucky, he was the orator of the day. The able and interesting address he then delivered has not been preserved, though still spoken of in terms of highest commendation by those who heard it. That it was not preserved is greatly to be regretted. Few were more deeply versed in the annals of Kentucky, and still fewer better qualified to interest or instruct in regard to them. His young eyes had witnessed the founding of Kentucky. He had watched its vicissitudes and progress from a mere association of scattered settlements until it became a powerful State. He had been not only a spectator, but an actor in some of the most important events in its history. The causes that led to these events, the men who had participated in them, and the results that followed were all matters concerning which he was well qualified to speak. On the occasion in question from seven to ten thousand persons were present. The encampment of ten military companies gave a martial air to the event, while the entertainment and profit of the day were still further diversified by a sermon delivered by the Rev. Joseph C. Stiles.

At the Harrisburg convention of 1840, General Scott and his Whig friends combined with the supporters of General Harrison, defeating Mr. Clay and nominating Harrison for the presidency. It was a severe blow to Mr. Clay's ambition. He had been sanguine of nomination, and was undoubtedly the favorite with the masses of his party. He commented on the matter very bitterly, and complained of the treachery of his friends, among others of Scott. He justly charged that he had fought the bitter battles of his party for many years without reward, and that when he at last hoped to enjoy the fruits of victory he was turned thankless away. He said at the time that if there were two Henry Clays, one could make the other President, but when he spoke, wine and anger rather than either Clay were speaking.

General Scott gave a Whig banquet at Washington in the interest of General Harrison, shortly after the nomination. Invitations were issued to all Whig members of Congress and leading men of the party about the capital. There was some curiosity as to whether Mr. Clay would attend. The reception rooms, when the hour arrived, were crowded and on the *qui vive* when an usher announced "Mr. Clay." As he strode in with characteristic dignity, General Scott advanced to meet him with extended hand. "I am happy to meet you, Mr. Clay," was the hearty greeting of the host. "I'll be d—d if you are, General Scott," was the indecorous but emphatic reply of the still irate Whig leader. An explanation of such unseemly conduct is furnished by Henry A. Wise, in his "Seven Decades:" "From 1839 to 1844, as long as he was in the House, Mr. Clay was especially intemperate in habits and more intemperate in exhibition of temper and political conduct." Alluding to him at this period, Tom Marshall speaks of him as "a sublime blackguard."

John Tyler, of Virginia, of the State's Rights party, was placed on the ticket with General Harrison, while the Democrats nominated Martin Van Buren for President, and Richard M. Johnson for Vice-President, both being Jackson Democrats in the fullest sense.

Of Colonel Johnson, the English traveler, Miss Martineau, thus wrote in 1835: "If he should become President he will be as strange a looking potentate as ever ruled. His countenance is wild, though with much cleverness in it; his hair wanders all abroad, and he wears no cravat. But there is no telling how he might look, if dressed like the other people."* He habitually wore a red plush vest, the gorgeousness of which he may have regarded as compensating for absence of neckwear.

The campaign that ensued was, in some respects, unique. The Whig nominating convention had adopted no platform, had announced no principles, and committed its nominees to no policy. The candidates depended for success on their reputation for political integrity, and on their personal popularity, rather than because they favored or opposed any special principle or measure. They opposed Jackson and Van Buren, but what they favored was not announced, and no one seems to have inquired. The campaign was conducted in a manner highly in keeping with its inauguration. It was called the "Log Cabin and Hard Cider" campaign, because the Whigs used these as symbols of Harrison's Republicanism. At every political meeting a log cabin was erected—in which hard cider was served—and often

* Western Travel, page 155.

such a structure was arranged on wheels and hauled from point to point, arousing the greatest enthusiasm.

Mr. Hardin, as usual, took part in the campaign. After the retirement of General Jackson from public life, Mr. Van Buren claimed to wear his mantle, and to be the special exponent of the principles and policy that had marked his turbulent career. Yet, between Jackson —"the fighting-cock" Jackson (as Parton calls him)—and the magician of Kinderhook—the shrewd lawyer and crafty politician, Van Buren—there existed the greatest imaginable contrast. Their mental and moral characteristics were not less unlike than their persons.

A friend of the author thus refers to a campaign speech of Mr. Hardin at this period: "His allusions to Van Buren were broad in humor but effective. He described his personal appearance as a little duck-legged man, foppish in dress and manners. When he approached another he would commence bowing and scraping, and just before reaching the person would execute a short backward movement (with a view to greater effect) then bow forward and offer his hand—all which maneuvers Mr. Hardin imitated. He described how Van Buren dressed and took care of his hair—using tortoise-shell combs to keep it in curl. He also described how, with his duck legs, he undertook to tread in the footsteps of the long-legged Jackson—convulsing his hearers by the illustration."* Governor Henry A. Wise, in "Seven Decades," says Van Buren was called the "mistletoe politician, nourished by the sap of the hickory tree."

It must not be inferred, however, that Mr. Hardin depended solely on his powers of ridicule and invective, although they were effective weapons. No one contributed more efficiently to educate the public mind in regard to the questions dividing the great political parties of that day. "During the Harrison campaign in 1840," says Colonel R. T. Durrett (author of the Life of John Filson), "I attended a barbecue in Henry county, where were present Bellamy Storer, of Ohio, and Mr. Clay, and Mr. Crittenden. All of these made speeches and so did Mr. Hardin, who was also present. In my youthful judgment Mr. Hardin excelled them all."

In the beginning of the year 1842, the name of Mr. Hardin was mentioned in connection with the United States senatorship. Mr. Clay and Mr. Crittenden were the sitting members, though the term of the latter was just expiring, and Governor James T. Morehead had been chosen his successor. February 16, 1842, Mr. Clay resigned his seat, in pursuance of a desire entertained for several years of

* Harrison D. Taylor, Esq., of Hartford.

"retiring to private life." Mr. Clay's valedictory in the Senate was both manly and eloquent, and Mr. Colton, in describing the scene in his "Life of Clay," throws not a little pathos into it.

Some months afterward, Governor Letcher, a warm friend of the retiring statesman, seems to have read something between the lines of that valedictory that escaped the innocent eyes of Mr. Clay's biographer. "The old Prince"—so does the irreverent governor refer to the sage of Ashland, in a letter to Crittenden—"the old Prince is taking a pretty considerable rise everywhere, I can tell you. I guess he now begins to see the good of leaving the Senate—of getting off awhile merely to get on better. He must hereafter remain a little quiet and hold his jaw."

On Mr. Clay's resignation, Mr. Crittenden succeeded him, by appointment. It was understood that the Legislature, which was then in session, would shortly elect a successor to fill the vacancy, and that Mr. Crittenden was a candidate.

That Mr. Hardin was also an aspirant may be gathered from correspondence between Mr. Crittenden and Governor Letcher. "Owsley heard as he passed through Lancaster," writes Crittenden from Washington, "that your nephew, George McKee, would vote for Hardin in preference to all others."

On February 24th (the day before the election), Governor Letcher thus writes from Frankfort: "Mr. Clay's resignation was filed yesterday, and I am told that in one moment afterward a few demons set about the work of mischief. They are endeavoring to bring out all sorts of opposition, trying everybody and anybody. Underwood, they think, would embody the greatest force, because of his Green river residence; but that point has been guarded. His friends won't allow the trick to be played, that is settled; and if Underwood was here he would settle it in the same way. Charley Morehead is talked of, but, in my opinion, he won't make the attempt. Ben Hardin is here; I presume he will be the opposition; hope he will make a poor show."

Whatever Mr. Hardin's plans were, he seems to have made no attempt to execute them, and so, on February 25th, Mr. Crittenden was elected without opposition for the remainder of Mr. Clay's term. At the following session Mr. Crittenden was elected for a full term. In the August preceding, Letcher had written: "Ben Hardin and John Helm may possibly try to figure in the game, but it will not amount to much." Governor Helm was elected speaker of the lower House

in the State Legislature, of which he was that session a member, but it does not appear that either he or Mr. Hardin made any attempt to "figure in the game." As stated in a subsequent chapter, it is not improbable that Mr. Hardin supposed that holding the post of secretary of State would be favorable to his senatorial aspirations. As much was charged, but it does not appear that he ever reached the point of becoming an avowed candidate.

In 1844 Henry Clay for a third time entered the lists as a presidential candidate. His friends were never more attached and enthusiastic, his enemies never more active and implacable. To his old foes, the hero of New Orleans and his followers, he had added John Tyler and his friends, John C. Calhoun and his adherents. Webster's relation to President Tyler's cabinet neutralized any power he might otherwise have wielded either way. Notwithstanding all these ill omens, Mr. Clay entered the contest with a boldness and confidence that inspired his friends. He entered it with the assumption that the prestige of the Whig party that in 1840 had elected Harrison would now bear him not less surely to victory.

Mr. Van Buren was in this year the prospective Democratic candidate. A majority of the votes in the approaching national convention of his party had already been secured by the action of State meetings, and his nomination seemingly made certain. A contest with him was exceedingly gratifying to Mr. Clay, inasmuch as he stood for all that was objectionable and unpopular in Jackson's two administrations as well as his own, unredeemed by the military glory that had outshone all the shortcomings of the "old hero." The political issues of the day were not a little hackneyed, but they nevertheless served to maintain party alignment.

There was a question at that period somewhat in embryo, yet sufficiently developed and defined to be at any moment injected as an issue in current politics. There was a sentiment prevalent throughout the South favoring the annexation of Texas to the United States and its admission as a State of the Union. The population of the Lone Star republic was composed almost entirely of those who had emigrated from the United States, and the people from the South felt them to be neighbors and kinsmen, imbued with like interests and sentiments with themselves. So far as the public mind of the North had assumed shape, it was adverse to annexation. It would add to the political importance of the South and disturb the equilibrium of the sections. The plea that it would embroil the country in a foreign

war was probably but a make-weight and pretext. The question of annexation at the time was really between sections rather than between parties. Whigs and Democrats favored it in the South; Democrats and Whigs opposed it in the North. Both parties in their organized capacities were shy of it, and each was apprehensive of taking either horn of the dilemma.

Mr. Van Buren, assured, as he felt, of the Democratic nomination and of election, was loth to hazard his prospects by dealing with the question. He and his friends were disposed, if possible, to keep it in the background, at least until after the presidential campaign ended. Yet, it was realized that it was an issue that might be precipitated at any moment, and in such event must be promptly and unhesitatingly met. He was not a man of impulse, as was Clay; he was a cool, calculating, and adroit, if not wise, politician, and, foreseeing the emergency, provided for it. On due deliberation and consultation with his friends, he wrote a letter, avowing his hostility to the annexation of Texas, which, however, he did not publish, but entrusted to certain friends in Washington to be kept secret, and only to be divulged when necessity should arise. As to when that necessity would arise depended on the uncertain events of the future. If Mr. Clay should favor annexation, and it proved popular, Mr. Van Buren could readily concur, and thus share that popularity. If it proved unpopular, the secret letter would then be published, showing how all along he had opposed annexation. If, however, Mr. Clay opposed annexation, and the measure proved popular, Mr. Van Buren could modify his views, and destroy the secret letter, and so tack about as to catch the popular breeze. It seemed beforehand as if having written that letter was a very shrewd and wise thing.

Mr. Clay, on the other hand, had written no letter of any kind. He had not consulted his friends, or determined upon his line of action with reference to the Texas question. He always felt prepared without advice to determine his political course in every emergency. There had as yet been no occasion for him to take ground on the Texas question, and it is doubtful if his most active and intimate friends were advised as to what his course would be in respect to it. It is said that President Tyler was chiefly instrumental in introducing the subject into the canvass, and that he was actuated thereto by a desire to defeat Mr. Clay, in revenge for the latter's bitter warfare on him and his administration. On February 12, 1844, he had negotiated a treaty with the Texan Government for annexation, but the

Senate refused to ratify it. He possibly foresaw Mr. Clay's course, and anticipated its result. He had taken the precaution to secure the active co-operation of the old warrior at the Hermitage in favor of annexation, and had committed the Democratic party in its favor, to a great extent, thereby.

Such was the situation when Mr. Clay set forth on a Southern tour in the interest of his candidacy. Arriving at Raleigh, he felt called upon, by the state of public feeling he discovered in the South, to announce his position in reference to the Texas question, and so wrote and published a letter avowing his opposition to annexation. He denounced it as compromising "the national character and dangerous to the integrity of the Union." This letter, though in keeping with his character, was a surprise to the country and a shock to his friends, especially in the Middle and Southern States. It lost him many supporters without any corresponding compensation. In short, it was a political disaster never to be retrieved.

At the particular period when the Raleigh letter was about to be published in a Washington newspaper, Mr. Van Buren's son, John, a sprightly lawyer and dashing young gentleman of New York, happened in Washington, his father being then at his home in Kinderhook. John, in addition to a natural flow of animal spirits, was, at that time, indulging in a series of convivialities that deprived him of his sober, cooler, and better judgment. But self-confidence and a lively appreciation of his own powers were well-known characteristics with him at all times. During his father's administration it was understood that he had been a suitor for the hand of no less a personage than the present Empress of India, then the girlish Queen of England. Nothing more came of that adventure than the title of "Prince John," which clung to him all his days. So it was John felt himself a sort of minister plenipotentiary for his father, and knowing of the existence of the secret letter, conceived that the moment had arrived for instant publication, and so he obtained and did publish it simultaneously with the appearance of Mr. Clay's letter in Washington. And thus Mr. Van Buren's ambitious hopes, despite all his shrewdness, were forever laid low.

It is true that Mr. Van Buren had a majority of the votes of the national convention pledged in his favor, yet the Democratic leaders, when the convention assembled, had no difficulty in surmounting this obstacle. Some of these same votes (pledged to Mr. Van Buren) assisted in the origination and adoption of the famous two-thirds rule;

that is, requiring two-thirds of all the votes in convention for nomination. The result was Mr. Van Buren's defeat and the nomination of James K. Polk, of Tennessee.

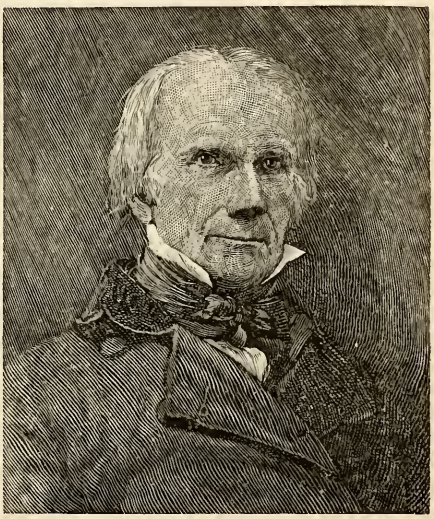
Mr. Polk was not the equal of Mr. Clay in ability, but, nevertheless, a most respectable figure. As governor of Tennessee, as member of Congress, and as speaker of that body, he had acquitted himself with honor. But whatever superiority Mr. Clay enjoyed in the way of talent was more than offset by the advantage of his competitor on the question of annexation. It is needless to say that every possible assurance was given that Mr. Polk was in favor of that scheme, although his sectional location rendered assurance unnecessary. It proved the controlling question of the campaign. Mr. Clay attempted to parry the damaging effect of the Raleigh letter by modifying his views in a subsequent publication (called his Alabama letter), but the attempt was unsuccessful.

Mr. Hardin had been elector for Clay in the campaign of 1832, and at the special instance of the latter he was again assigned that post. It is not probable that the latter intervened in this matter so much from overweening partiality for Mr. Hardin, as from confidence in his great ability as a campaigner. Although, in early life, these two had had some spirited encounters not altogether pleasant or promotive of cordial relations, yet after 1824 there is every reason to believe that Mr. Hardin was always the loyal and unfaltering supporter of the great Whig leader. Possibly, indeed probably, this support was prompted by attachment to the cause he represented, with a touch of State pride thrown in, rather than devotion to the man. Mr. Hardin was no hero worshiper. He was irreconcilably opposed to General Jackson and his political measures and methods, and in the long and bitter struggle for mastery in the control of government between the latter and Mr. Clay, Mr. Hardin would have found it difficult in analyzing the motives of his action to determine whether opposition to Jackson or support of Clay most animated his efforts.

There were, from time to time, departures made by Mr. Clay in virtue of his unquestionable leadership of his party, of which Mr. Hardin, in common with other reflecting Whigs, doubted the wisdom. Mr. Clay often acted more from willfulness than wisdom, and unnecessarily sacrificed or imperiled the welfare and success of his cause. This was notably true in respect to his unsparing assaults on the administration of John Tyler. In Kentucky, however, as well as elsewhere, he had a host of friends who neither demurred to, nor

appealed from, his autocratic fiats. These were true courtiers, from whom he heard nothing but what was pleasant. These stood nearer to him than Mr. Hardin, which the latter always knew.

Between these two great Kentuckians there were antagonisms of character and sentiment that never could be entirely removed or harmonized. The first difficulty was the strong and clearly-marked individuality of each. Each was an original, and accustomed intellectually and morally to stand alone. Both were forcible thinkers, and each thought for himself. Each possessed a powerful will, the mainspring of great men. Clay was a born leader, while, if not a leader, Hardin was not the least a follower. In no political system would he shine with light borrowed from any central sun. Illustrating this trait, he said "he had prescribed the rule to himself never to listen to a man speaking on the same side of a question on which he intended to speak, lest his own ideas should lose their original cast and symmetry." They both belonged to, and each were ornaments of, the same profession, but Clay was a political lawyer, while Hardin was a legal politician. One was a politician in the court-house, and the other a lawyer in Congress. Both were self-reliant and confident, but, while the overweening confidence of Clay betrayed him into overlooking or underestimating the difficulty of his schemes and the power of his opponents,* Hardin more wisely undertook nothing that was hopeless, and only that which might reasonably be attained. Hardin was the superior in forecast.



HENRY CLAY.

Clay had many of the attributes of the courtier, and especially that social tact and power that are such important elements of political success. He possessed that suavity and grace of manner that give to genius an added charm—that indefinable air of the cosmopolite which places him *en rapport* with "the brotherhood of man." A happy illustration of Mr. Clay's *suaviter in modo* is an incident related of his senatorial life. After the admission of Arkansas, its senators differed in

* Says General Preston: "When Mr. Clay was in doubt about what course to pursue, he acted on the principle of Hoyle, and took the trick."

pronunciation of the name of their constituent, one calling it as spelled, the other *Arkansaw*. When Mr. Clay happened in the President's chair, he varied his pronunciation of Rackensack to suit the views of each of the honorable gentlemen.

On the other hand, although of excellent colloquial powers, Mr. Hardin had often the manner of a philosophic cynic, with an unmistakable touch of provincialism. Hardin was the superior lawyer, Clay the greater statesman. No attempt will be made to contrast their oratorical powers, which in many respects were entirely dissimilar.

While they stood shoulder to shoulder in face of the common enemy they were not in entire political accord. In ante-bellum days a shade, not always clearly defined, divided the Whigs—a distinction that in later times has faded from all parties. Among the earliest Republican theories was incorporated the idea that the landholder should enjoy rights, powers, and privileges superior to his landless neighbor. Such were the teachings of the liberty-loving Hampden and the philosophic Sidney. The ancestors of the Virginians brought the seeds of this doctrine with them across the ocean, and it outcropped in many of their laws. For example, the right of suffrage was confined to freeholders in that State long after American independence. The underlying reason for this doctrine was that the landholder, depending on Government to secure his right, could better be trusted as its supporter and friend than he who could fold his tent in the night and with all his possessions hie away to greener pastures or more peaceful retreats. These land-holding Republicans were designated as the "Silver-gray" Whigs by some; and though he was not, in acting, at all times consistent with that theory, such was Mr. Hardin in sentiment.

In almost every conflict between the agricultural and manufacturing and commercial classes, he advocated the superior rights of the former. Mr. Clay, on the other hand, for the greater part of his life was a radical Whig, who acted on the theory that the all-sufficient guaranty of republican government was the virtue of the people, the whole people, of every class and pursuit. While this distinction was little more than a theory, in effect it led Hardin to favor that which promoted the interest of the agricultural section of the country—the slave-holding South—while Mr. Clay gravitated in a contrary direction. Hence, it seemed a matter of course for Clay to oppose the annexation of Texas, and equally so for Hardin to favor it. Replying to the author's query as to the nature of the relations between Mr. Hardin and Mr. Clay, Hon. Martin D. McHenry, of Iowa, writes as follows:

"There have been some passages in debate between Mr. Hardin and Mr. Clay, that for the occasion were racy and exciting, but I know that long years afterward they were on the very kindest terms. In 1844 Mr. Hardin and myself attended a Whig convention in Lexington. We left our saddle-horses at Frankfort, and went upon the railroad car, then drawn by horses. Just as we went to our bed-room, after the convention closed, Henry Clay, Jr., called upon us with a kind and pressing invitation from his father to dine with him in company with other friends the next day. We both had to decline with regret, as we were to go to Frankfort to breakfast, and from there, Mr. Hardin to an appointment he had made to speak in Anderson county, and I to one I had made in Shelby, near the Henry line. We, in substance, sent our regrets, and told Henry to tell his father that, while his other friends were discussing his viands, we would be discussing his merits before the people."

Mr. Hardin's labors during the campaign were great and powerful in effect. The contest was hotly maintained on both sides, in Kentucky, and Hardin bowed his crest to no competitor.

"I heard Ben Hardin, in 1844, make a public speech at Elizabethtown," says Hon. Alexander Craycroft. "I was quite young—not mature enough to sufficiently appreciate its merits. Rowan Hardin had spoken in the morning—his father followed in the afternoon. One passage in Mr. Hardin's speech yet lingers in my memory: 'Polk had spent his life like a little black-jack in the depth of the forest, secured by his own insignificance from the danger of storm and tempest. He had passed it with no higher ambition, and seeking no greater pleasure, than he could find on the shores of Duck river, while Henry Clay had walked the mountain tops for half a century—like a giant, baring his breast to every storm, and leaving his foot-prints in the living rock!'"

On another occasion he closed a speech of marvelous power and eloquence with this glowing sentence: "Elect Mr. Clay, and, like Simeon of old, I will be ready to depart in peace, mine eyes having seen my country's salvation!"

These meager specimens must be accepted as some hint of the tone and spirit of his speeches in the campaign—reports of which were rare in that day. Kentucky proved herself faithful to her great son at the election, and the credit was in part due to Mr. Hardin's tireless efforts. Nevertheless, the result was the overwhelming defeat of Mr. Clay. With that defeat ended for him every reasonable prospect of reaching the presidency. After that campaign, Mr. Hardin never took conspicuous part in a presidential election, and there practically terminated his active participation in national politics.

CHAPTER XXV.

SOME THINGS MR. HARDIN THOUGHT AND SAID OF OTHERS.

WHILE Mr. Hardin was eminently a man of the people, in hearty sympathy with the honest sentiments and simple tastes of the masses, yet he entertained a just estimate and appreciation of the talents of the great men who were his contemporaries, or whose names and fame were connected with the history of his country. "It has been a great desideratum with me," he once remarked, "in reading the debates of the Virginia convention, and the debates of the convention that made the Constitution of the United States, to know the particular history and description of the men who figured in those conventions. If I ever worried a gentleman in my life it was Mr. Madison when I first went to Congress to get from him the personal anecdotes and reminiscences of the incidents of the time of the formation of the Federal Constitution with which his mind was well stored."

Mr. Hardin's opportunities for observing the eminent men of his generation—a generation notably fruitful of talent—had been exceptional. His long public service in State and National councils, coupled with his own prominence in every body to which he belonged, brought him in contact or association with the brightest men in public life. In 1849 he said, "I have been personally acquainted with every distinguished man, I believe, who has figured in public life from the year 1815 up to this time." This opportunity for observation, coupled with his excellent judgment of character and talent, render his deliberate opinions of especial value.

Before Horace Greeley had advised the "young man" to "go west" ex-President Buchanan forsook his Pennsylvania home and came to Kentucky. "I recollect very well," said Mr. Hardin, in 1849, "that some thirty-seven or thirty-eight years ago the celebrated James Buchanan, late secretary of State under Mr. Polk, commenced the practice of law in the town of Elizabeth. There I became acquainted with him, and at that time I discovered in him a man of fine education and respectable talents. In the course of a few months he began to look unhappy, and as if he was experiencing some disappointment. His

father had given him a large landed estate in Hardin county, about which there was some difficulty. At length he made me his attorney at law and attorney in fact, and went back and settled in Pennsylvania, where he was raised. Ten or fifteen years afterward I met him in Congress, and over and over again have we laughed when he told me this story:

"I went to Kentucky," said he, "expecting to be a great man there, but every lawyer I met at the bar was my equal, and more than half of them my superiors, so I gave it up."

Rufus Choate, of Massachusetts, was Mr. Hardin's colleague in the Twenty-third Congress, and won national fame as an orator by his efforts at that period. Hardin greatly admired him. Mr. Choate made a characteristic and eloquent speech on the subject of the removal of the deposits, one of the exciting questions during General Jackson's administration. "It was with relation to this speech," said Mr. Brown, in his biography of the Massachusetts statesman, "that the anecdote is told of Benjamin Hardin, 'old Ben Hardin,' as he was called, of Kentucky, who then heard Mr. Choate for the first time. I give it in the words of one who was present. Mr. Hardin was an old stager in politics. A strong-minded, though somewhat rough, individual, who was not disposed to much leniency in his criticisms of younger members, he was, like Mr. Choate, Whig in politics; and some days after the speech of Mr. Choate he made an elaborate argument on the same question and on the same side."

"In this discussion," remarked Mr. Hardin, "I have observed a rule which I prescribed to myself twenty-five years ago, that is, never to listen to a man speaking on the same side of a question I am on, whom I am to follow; because if I did I would fall into his mode of expression, and my ideas would lose their original cast and symmetry. In observing this rule one exception has occurred in this debate. When the gentleman from Massachusetts (Mr. Choate) took the floor a day or two ago, I determined to remain in my seat a few moments and hear the plan of his argument unfolded, but in a moment or two it became too late to leave my place. I was charmed, spellbound, and never moved until he had concluded his speech. I felicitate myself on having heard him, for never did any orator furnish his auditors with a richer intellectual feast or one more pleasing to the finer passions of the heart. For strength and vigor of argument it has not been excelled in this House; and for all ornaments which decorate an argument—style, imagery, and melody of voice—I never heard its equal."

Hon. S. S. Cox, in alluding to the effect of this speech on Hardin, says: "The large-hearted and broad-humored Kentuckian threaded delightfully the labyrinthine beauty of Choate's rhetoric, and saw something in the legal dialectician and in the Gothic style of his multifarious oratory that enamored him by a witchery beyond the reach of art."

It was in a debate with Mr. Clay in Congress in 1816 that Hardin won the soubriquet of "Kitchen Knife." That "Kitchen Knife" having been used on Mr. Clay, there was a consequent diminution of cordiality between the two. The extent of the estrangement or its duration is unknown. When, however, after the election of John Quincy Adams, Mr. Clay was assailed by the calumnious charge of bargain and intrigue, Mr. Hardin became his zealous defender. He was prompted partly by State pride and partly by his belief that the charge was slanderous.

Mr. Clay brooked no rivalry, especially among the Whig politicians of Kentucky. So autocratic was he that the amiable Crittenden more than once had a personal breach with him. Mr. Hardin regarded Mr. Clay's conduct among his Whig colleagues as tyrannical and overbearing. While the Whig party was still a great political force, Mr. Hardin remarked that Mr. Clay would grind it to dust by his domineering spirit. Mr. Hardin was not alone in his distrust of Mr. Clay's leadership. Governor John Pope, on one occasion (after uniting with the Whig party), was discussing the result of the Harrisburg convention of 1840 in which Mr. Clay was defeated for the presidential nomination, and in reply to a question as to what would have been the result of Mr. Clay's success, he said: "We should have witnessed in America all the extravagancies of the Bonaparte dynasty, and hazarded all the calamities it brought upon France." Said Tom Marshall: "Death, tribute, or the Koran was his motto."

Mr. Webster, with less will-power than Mr. Clay, and at all times dutifully following the latter's leadership, in some respects was a stronger man. Webster, though less impassioned in his oratory, was by a warm nature drawn personally nearer his friends than Mr. Clay to his. Webster was loved, while as to Clay love was more largely mixed with admiration.

Mr. Hardin was inclined to measure Mr. Clay from a professional standpoint. Too proud to admit himself an inferior in any arena, he especially felt himself Mr. Clay's superior in lawyership. Yet he was far from seeking to elevate himself by depreciating the great states-

man—and honestly admired and on many occasions testified to his talents. He esteemed the great "Commoner," not only as a lawyer and statesman, but also as a skillful manipulator of short cards. He said he had often played cards with Mr. Clay, but always on his side, carefully avoiding ever becoming his adversary.

Whatever may have been the inner personal relations between Clay and Hardin, it is certain that the latter was attached to Mr. Webster, and highly appreciated his great ability. "I recollect the first time I ever saw Daniel Webster and heard him speak," said Mr. Hardin, within a year or two of Webster's death. "The conversation he and I had about it we have laughed over twenty times since. He started off in his speech as cold as an icicle, and as pure as if it hung from the temple of the maiden goddess Diana. His language was pure, but his manner cold. I remarked to him: 'Sir, if you will come and settle in Kentucky, and learn our mode of speaking, you will be an orator equal to any Greece or Rome ever produced.' The last time I saw him, he said: 'Would to God I had taken your advice.'"

John Quincy Adams was a cold man, without warm personal friends or social feeling. Mr. Hardin and he were so entirely dissimilar that antipathy early took the place of indifference. The former, in a speech in Congress, apologized for voting for Adams in 1828: "I supported John Quincy Adams' election because his defeat was based on proving bargain, sale, and corruption against six or seven of the best men in Kentucky, and I was determined to stand up for Kentucky. I supported him, however, with tears in my eyes." Mr. Hardin and Governor John Pope were rivals in the local politics of Kentucky. Adams and Pope were brothers-in-law, having married a couple of handsome English girls who were sisters. This circumstance must not be overlooked in estimating Hardin's opinion of Adams.

While Mr. Crawford was secretary of the treasury in Mr. Monroe's cabinet, mismanagement of that department was charged by Mr. Cook, an Illinois Congressman. In the course of his reply to remarks by Cook, Mr. Hardin, alluding to Crawford, said: "I have the utmost confidence in that officer—as much as I can have in any man, and in the correctness of his conduct." This estimate of Crawford was very just. The impression to be gathered of him from many concurrent sources is, that he was a big-brained, large-bodied, great-hearted man, who deserved a better fate than befell him.

Mr. Hardin early formed an attachment for William T. Barry, of Kentucky, which no time or vicissitude weakened. Barry and he had been on opposite sides in the old and new court struggle. Afterward they widely diverged politically, the former casting his fortunes with General Jackson and his friends. When Jackson became President, Barry received the appointment of postmaster-general. Under Barry's administration his department was charged with many short-comings, abuses, and irregularities by the Whigs. Hardin called attention to many of these things in a speech in Congress—but at the same time vindicated Barry. "While I am on this point," said he, "I will declare once for all, that I believe whenever the postmaster-general leaves that department, he will go out with clean hands, unstained and uncontaminated with plunder. However others may enrich themselves with the spoils of that department, individually, he will gain no profit, except the salary allowed by law. I have known that gentleman for thirty years, occasionally have met him at the bar, and served with him in Congress. I have no doubt of his honesty. He is a man of talents, and has rich and choice gifts as an orator, but he is a child as to the wiles of man, and the tricks and artifices of the world. He has been the dupe of all parties to which he ever belonged, and the dupe of every cunning knave that he had anything to do with, either individually or officially. To this artless simplicity of his, to his incapacity to say no to the importunities and entreaties of those he has been connected with, is to be attributed the present derangement of the department over which he presides."

A year after this utterance Barry ended his earthly career in a foreign land, mourned by all parties.

In 1834, Mr. Hardin said of John J. Crittenden, that he was "inferior to no man in America as a profound lawyer and eloquent orator, and was of as pure and incorruptible integrity as any man who ever lived." Within a year of his own death, in a touching way, Mr. Hardin referred to his continued high opinion and regard for Mr. Crittenden.*

The story of Benjamin Sebastian is one of the most interesting and unique in the history of Kentucky. From Marshall down to the latest historian it has been the fashion to denounce him as the enemy of his country. The complaint made by Mr. Hardin was, that while Sebastian may have done that which was not to be justified, yet, nevertheless, he had proved himself a public benefactor, and it was ingratitude not to recognize his services. Mr. Shaler says Sebastian was a native

* See chapter XXXVII.

of Great Britain, though on what authority the statement is made is not known. He was educated as a Church of England clergyman in this country, and went to England for holy orders. As early as 1785 he had returned to America, and was a citizen of Jefferson county, where he was engaged in practicing law. In 1785, 1787, 1788, and 1792, he was a member of the respective conventions that assembled in each of those years, having for their object the formation of a new State. On the admission of Kentucky he became an associate justice of the Court of Appeals. This office he held until his resignation in 1806, after which he resided at Falls of Rough, in Grayson county, where he spent the close of his life. For many years prior to the purchase of Louisiana by President Jefferson, in 1805, the Spanish government had possession and control of that territory. The Mississippi river was the only practicable outlet at that day for the products of the western country, it being the highway to markets in New Orleans, the West Indies, and Europe. But there was no commercial treaty between the United States and Spain, and the latter Government levied most ruinous exactions under guise of import and export duties.

It was complained in the West that the Federal Government neglected the welfare of the people west of the Alleghenies, in not affording better protection (for a period at least) against Indian hostilities, and later in allowing the Spanish Government to oppress them with import and export duties in getting to and from market. As to the Indians, it is well known that for the most part the frontier settlements were allowed by the Federal Government to shift for themselves. This they did quite successfully. On the same principle they sought to make terms with the Spanish Government touching their trade down the Mississippi. At the same time the people of the West were agitated with views of this kind, undoubtedly the Spaniard hoped to form alliances that would ultimately detach Kentucky and some considerable part of the north-west territory from the Atlantic republic.

Overtures first came from the Spaniards, and the West in its dilemma listened to them. Sebastian and others, acting by approbation of the people generally, met the authorities of Spain and negotiated a treaty or arrangement, whereby exports and imports were allowed to pass to and from New Orleans by payment of a light tariff. This arrangement, effected mainly through Sebastian, saved hundreds of thousands of dollars to Kentucky and brought an influx of great prosperity. Spain, it may be assumed, intended this act of grace as a step toward

separation of the Western country from the Atlantic States, and an alliance more or less close with herself. The Western people were not a little embarrassed at this period. However content they were to remain a part of the United States, yet they could not afford to break their kind relations with Spain. To do so was commercial and financial ruin. It was the clear policy of those who undertook to represent the people to preserve the semblance of friendship for the Spaniard, and allow the latter to believe that what he hoped might transpire.

Sebastian had undertaken to act for Kentucky, and whether he ever contemplated doing more than was done may be doubted. Wilkinson may have had larger designs, but there is no proof of Sebastian's connection with them. If he did receive a pension from the Spanish government for services performed or promised (as charged), it was an impropriety that would have been winked at in Kentucky at any time during John Adams' administration, and earlier. The supposed pension may, after all, have been a bonus received by him for his share of profits by certain traders under commercial arrangements negotiated by him. Conceding that the Spanish government paid him two thousand dollars per year, it by no means follows that it was a pension. But in 1797 the Court of Appeals, composed of Muter, Wallace, and Sebastian, had decided that all entries which did not describe the land entered, so as to identify it, were void for uncertainty. As this decision rendered nugatory a large number of land titles, great excitement resulted, and the judges of the Court of Appeals were regarded by many people as public enemies. This was the beginning of Sebastian's misfortunes.

After the Burr conspiracy had exploded, those who had inaugurated prosecution against Burr cast around for some object of attack, and, in default of others, fell on Sebastian. Ten years before, public sentiment would have protected the man who had secured the people the commercial advantages under the Spanish arrangement. But now that the Louisiana Territory belonged to the United States, Sebastian's services were forgotten, and he was delivered over to his enemies. The proverbial ingratitude of Republics had here another illustration. He was attacked by the Legislature, and steps were being taken for his removal from office. Arraigned by his enemies and abandoned by his friends, he succumbed to the storm and resigned.

Mr. Hardin always believed that he was unjustly and ungratefully treated, and often announced his purpose to write a book in his vindi-

cation. Harry Innis, George Nicholas, and William Murray were implicated with Sebastian, and, so far as culpability goes, seem in little better state, but they were men of greater personal influence by reason of family ties, and, besides and mainly, neither of them had declared and held that uncertain land entries were void. Except that Sebastian received a *pension*, or was supposed to have done so, his case and that of Innis, Nicholas, etc., are not to be distinguished. Historians have distinguished between their cases and Sebastian's more or less unsatisfactorily, but all have concurred in heaping contumely on the latter. He was made the scapegoat for the sins of hundreds of leading men in Kentucky who had been similarly imprudent. With this prelude, the reader will understand the following expressions by Mr. Hardin:

"These two duties, the import and export, were too heavy and oppressive. Kentucky could not bear them, and the government of the United States failed to obtain better terms and conditions from Spain. The people of Kentucky were much excited on this subject during the years 1793, 1794, and 1795. In 1795, the leading men in Kentucky sent the late Judge Sebastian to Orleans to obtain from the governor of Orleans a reduction in these duties, and to procure better terms and conditions in our commercial intercourse with Spain. I have said, and I repeat it, that the first men in Kentucky, great, too, as any in America, concurred in sending Judge Sebastian to Orleans to make those commercial arrangements with Spain.

"The original papers connected with that transaction were given to me near twenty years ago, either by Judge Sebastian himself, or his son, Dr. Charles Sebastian. I have some of them now in my hand—one signed by George Nicholas, Harry Innis, William Murray, and Benjamin Sebastian—declaring the necessity of such a treaty, and appointing Sebastian to make and conclude such a treaty or commercial arrangement as the necessities required. I have also a copy of the treaty in the handwriting of Judge Sebastian. The signatures of George Nicholas, Harry Innis, William Murray, and Benjamin Sebastian are genuine. I have shown them to their acquaintances and relations, and they recognize their respective signatures. I also have a paper of a similar character, signed by near one hundred gentlemen of Kentucky, to the same import, or nearly so. I can not now lay my hands upon it. If it is not mislaid, I have it at home. Sebastian went to Orleans, and in pursuance of his instructions he made the treaty. It reduced the import duty to four per cent., and took off the export entirely; nay, the treaty went further; we had the permission to trade to all Spanish America on the same terms. It is the best commercial treaty we ever had with Spain.

"I am, Mr. President, greatly rejoiced that I have this opportunity to vindicate the names, characters, and memories of the illustrious men who figured in this country in the days of other years—days that tried the souls of men—men who have been slandered by some of the histories of this country, in which they are branded as traitors and Spanish conspirators—men that I feel proud of, and so ought my country to be proud of. Thirty or forty years ago I knew most of them. I see in my mind and can recollect exactly how they looked. They then had the aged and venerable appearance of the senators of Rome, seated in the Senate chamber, when the Gauls took and destroyed the city. * * * * * *

"Kentucky enjoyed the benefits of the regulations made by Sebastian until Spain transferred that country to France, and France to the United States; and after enjoying the benefits of Sebastian's labors for years, when the necessities for those regulations had passed away Kentucky for a time forgot his services, and the whole Legislature attacked him in 1806. Those that sent him who were alive—for some were dead—gave him no aid or assistance, and he sank under the assault and fell a victim to the rage of popular fury. I trust in God that the present generation will do his memory justice for the consolation of his posterity."

CHAPTER XXVI.

A QUESTION OF PREROGATIVE.

ONE of the most remarkable contests that ever occurred in Kentucky—remarkable for its nature, parties engaged, and its result—was that which occurred in 1847, between Governor William Owsley and Mr. Hardin, his secretary of State. For alleged grounds, the governor attempted to remove that official and supplant him with another. When the confirmation of the latter was sought, Mr. Hardin appeared before the Senate in opposition. The struggle that ensued was without precedent, and has since been without parallel in State history.

Of William Owsley, mention has been made in former pages, especially in those chapters relating to the "old and new court" controversy. He was conspicuous at that period, not so much by his talents as because he was associate judge of the "old" Court of Appeals, which the Legislature sought to abolish, and in its stead establish the "new." Possessed of sterling virtues, yet he was deficient in those lighter graces that aid or ensure political success. His unyielding adherence to principles which he deemed just, in face of popular clamor, while befitting the judicial office, was attributed to a tyrannical disposition. He was called a cold man, whose very virtue was construed a failing, in that it prevented sympathy for the failings of others. While regarded as a sound lawyer, he was not esteemed a great one, or by any means the equal of Boyle, the chief-justice. At the bar—before and after—he had been successful, and he had served with credit in the State Legislature, but to his judicial career he owed that character and standing that had chiefly given color to his aspirations to the chief magistracy of the State. After resigning his judgeship he was renominated, but, as stated elsewhere, rejected by the Senate. He then resumed the practice of his profession, gave attention to a handsome estate, served a term in the State Senate, and also as secretary of State, under Governor James T. Morehead. Such had been his career up to the year 1843. That year he aspired to succeed Robert P. Letcher in the gubernatorial chair. Being a Whig, he sought the nomination of his party. To this end, he and his friends

took such steps as they might to secure the favorable action of the county primary meetings. The aid of prominent politicians in various localities and the favorable consideration of the public press were duly invoked. The canvass that ensued may have had more dignity, but was not entirely free from some of the blemishes that had marked many such episodes before, to say nothing of those more recent.

Mr. Hardin and Judge Owsley had known each other and been friends for nearly forty years. They had served together in both houses of the State Legislature, and in the "old and new" court controversy no one had done more valiant and efficient service for the old judges than Mr. Hardin. Under such circumstances Judge Owsley not unnaturally expected the support of his old friend. Besides they lived in the same section of the State, and had, on this account, common interests and many neighborly affinities.

Mr. Hardin was disposed to favor the ambition of Owsley, not so much for the reasons mentioned, as for another. Abuses injurious to the public welfare had crept into the Whig party. That party had been continuously in power in the State for many years. The great majority of all offices were filled by appointment, the power of the governor in this respect being very extensive under the then existing Constitution. The principle that "to the victor belongs the spoils" had been imported from national politics. In some localities, to find fit incumbents of the Whig party to fill local offices, by no means afforded an opportunity for a competent Democrat. Whigs, and Whigs only, held offices which a Whig governor could bestow. Mr. Hardin—faithful to the principles of his party though he was—regarded this as an evil and a reproach that demanded remedy. The Whig party was in the majority, but not so preponderantly as that it could defy the minority when the latter had the better of the argument. Aside from the mere interest of party, there were many who believed that no party could rightfully sacrifice the public welfare to promote its own success. Of this class was Mr. Hardin.

When solicited by Judge Owsley for his support, he explained his views in regard to the policy which he thought should control the appointing power, saying he would support no one unpledged to carry out that policy. Judge Owsley did so pledge himself, and also authorized that fact to be communicated by Mr. Hardin to his friends and the public. Judge Owsley's reputation for unshaken firmness and unswerving integrity encouraged the belief that his election would

secure the execution of reforms beyond all peradventure, and thus make his own a shining contrast to previous Whig administrations.

With such assurances Mr. Hardin went forth the champion of his old friend. Primary meetings in Nelson and adjoining counties were held under his auspices, and instructions favoring Owsley were adopted. As elector on the Clay ticket he made speeches in many counties, and in these likewise procured meetings to be held, and the vote favorably instructed. His son, Rowan, not only made speeches but devoted a newspaper, of which he was editor, to the good cause. As the result of so much diligence and effort, at the Whig convention at Louisville, in 1844, William Owsley was nominated for governor.

Yet, a Whig nomination at that period was not necessarily election. The Democrats had for their candidate General William O. Butler, a man of high character, with an honorable record as a soldier of the war of 1812. Then, as since, to Kentuckians, no less than to the American people generally, there was an attractive glamor about a successful soldier. The friends of the Whig candidate realized the need of exertion, and were active. Mr. Hardin worked like a Trojan. It was a favorable circumstance that Mr. Clay was a candidate that year for the presidency. Not one could arouse the party in Kentucky like the "Great Harry." With all effort, however, and all favoring circumstances, while Governor Owsley was elected it was by a diminution of the party vote of five thousand.

Shortly after the election Mr. Hardin wrote Governor Owsley, suggesting his willingness to accept the office of secretary of State. As to his motive in seeking this appointment, perhaps State Senator Francis Peyton, of Breckinridge county, was not far wrong, to say the least, when he spoke as follows in the Senate on the subject:

"It is a matter of public notoriety that before Mr. Hardin solicited and obtained the office he had met with a misfortune in having his right hand so injured that he wrote with great difficulty and in so bad a manner that his writing could scarcely be read; that his habits of active life wholly unsuited him for the drudgery of secretary; that it was his intention, in good faith, to desert an extensive practice in a large circuit worth perhaps two or three thousand dollars per annum, and set himself down at Frankfort, as a scribe, at the pitiful salary of seven hundred and fifty dollars per annum, is believed by none who know him. His own good judgment and saving attention to his individual concerns forbids the idea that he ever expected or intended to perform the duties of the office in person. Indeed, he has often declared that he expected to perform most of the duties by deputy. The true secret

of Mr. Hardin's anxiety to obtain this office in the first instance will, I have no doubt, be found in the fact that he had high hopes at that time of being elected to the Senate of the United States. The office would necessarily throw him in contact with members of the Legislature, and thus the way might be paved for the accomplishment of the great purpose of his life."

To Mr. Hardin's letter the governor elect responded in a prompt and hearty way tendering him the secretaryship. The signal service he had rendered in the governor's election, coupled with his great talents and high rank with the masses of his party, made this action extremely appropriate. But the governor had other political friends who, although they had not done him the service, were as wise as Mr. Hardin. Discerning the motive of the latter in seeking a post at the State capital, they began sapping and mining. They represented to the governor that the appointment was unwise—unwise chiefly because they opposed it; and they opposed it because in making their political slates Mr. Hardin's name had no place, and, least of all, no place in connection with the highest party honor, the United States Senate. The governor referred to these opponents subsequently as composed of his Lexington friends.

It is more than probable that a want of better understanding with a coterie of Lexington politicians of that period was unfortunate for Mr. Hardin. Mr. Clay was regarded as the center and source of light in the political system of Kentucky. While a great leader, he was an imperious ruler of his followers. Those who were most loyal were strongest in favor, and these looked askance at the contumacious Whig who neither asked nor granted favors—such a one was Mr. Hardin. To extreme partisans—the Lexington coterie was composed of such—the intimation that a Whig governor should appoint the "best men" to office, regardless of party affiliation, was downright treason. That such a one should seek and possibly win the highest honor his State could confer was not to be thought of. So it was Governor Owsley wrote Mr. Hardin that his Lexington friends advised against his appointment, and he suggested that on this account, and for harmony, he decline it. To this letter there was no reply. This ominous silence impressed the governor and his friends more than protests or reproaches could have done. Another letter was shortly afterward written saying that the appointment would be made, and on the governor's installation it was made.

In September, 1844, he was commissioned and sworn, and at the instance of the governor he appointed as his assistant Abram S. Mitch-

ell, editor of the Danville *Tribune*, the governor's organ. On the assembling of the Legislature Mr. Hardin was nominated to the Senate as secretary of State and unanimously confirmed. During the sitting of the Legislature he was prompt and diligent in the discharge of official duties. At other times he was occasionally absent attending to his law practice. He removed his extensive library to Frankfort and opened a law office there, and expressed the intention of likewise removing his family. This latter was prevented by having unexpectedly devolved on him the care of the children of a sick daughter and an absent son. So it was that Mrs. Hardin remained at the homestead at Bardstown. Ordinarily the duties of secretary of State are mostly clerical in their nature, and there was little to distinguish Mr. Hardin's official career from that of his predecessors. A secretary might be consulted by the governor on any question of difficulty or importance, but these consultations were much a matter of courtesy, and their omission was no breach of official etiquette. It might have reasonably been supposed that a relation involving such little friction would have worked with monotonous smoothness, especially between ancient friends, but the stormy sequel proved far otherwise.

There is little doubt that some of those who had opposed his appointment subsequently employed their influence and management to produce causes that would effect his resignation or removal. There was such dissimilarity of temper, habits, and tastes between the governor and his secretary as that in close contact there could be little sympathy between them. The former was punctilious in dress and deportment, and the freedom of his manners was restrained by a dignified courtliness. In short, his bearing was that of an ancient patrician, conscious of the honors resting upon him, and yet he by no means meant anything more than a decent observance of the proprieties of his position. He felt that he owed this much to his fellow-citizens—to his State—to himself. There was not a little in Mr. Hardin's character antipodal to all this, and the reader will not be at a loss in making the contrast. Doubtless the governor had unconsciously been imbued with a feeling of antipathy to his old friend. While others about him were coating unpleasant facts and occurrences with flattery, Hardin thoughtlessly, or perversely, neglected such precautions. On the other hand, his frequent protests against appointments were so many friendly but disagreeable condemnations of the administration. The feeling was not unlike that between King Henry and Wolseley, when the cardinal had grown too great.

A wayside tavern in Grayson county, on the road leading from Elizabethtown to Litchfield, had long been a stopping-place of Mr. Hardin as he journeyed to and from the courts. He had known the family of his host while his offspring grew from childhood to maturity. After Mr. Hardin became secretary of State, his friendly offices were sought to obtain for a daughter of his host a position in Frankfort, where she might be taught the business of a milliner. This he did. Scandal-mongers, ever on the lookout, and the enemies of Mr. Hardin about Frankfort, seeking a pretext, feigned to find another motive for his actions, and unblushingly charged that the ruin of the young woman was intended. The very enormity of the charge excited such indignation as to unfit those who heard it from inquiring as to its truth.

That he acted otherwise than faithful to his trust was not believed by those best qualified to judge. Those who would have been injured by such base treachery never gave credence to it, and friendly relations with Mr. Hardin were never disturbed. Yet out of this circumstance "a hundred rumors were put in circulation about Frankfort, calculated," says Colonel J. P. Barbour, "to excite the most bitter prejudice against him; and upon his return, about midsummer, to that city, he found these prejudices and misrepresentations culminating in a mob of irate persons parading the streets and threatening him with personal violence of the most degrading character, if not with death. By the aid of his friends, Charles S. Morehead and James Davidson, a method of escape was planned and executed, and he miraculously, almost, made a safe retreat from the violence of his enemies. He had hardly reached home when he found the newspapers of the State filled with garbled and untruthful statements of the facts in the case, and the whole country penetrated with the most extreme excitement against him. He published a short appeal in the public journals, asking a suspension of public judgment until he could be heard."

For awhile he was a victim of a bitter public sentiment at the State capital. He had many faithful friends there, however, who remained true to him through evil as well as good report. But the governor's household were not of these. He was notified that he would be unwelcome at the "mansion," and would not be invited there. For awhile the governor gave him the cut direct, because he had heard Mr. Hardin had spoken of him disrespectfully, but in January, 1846, a better understanding was had, and apparently cordial relations restored. Yet, after that period, in making appointments,

the governor did not consult him, but did advise with his assistant, Mitchell. If Mr. Hardin recommended any one, it was said to be the signal for his rejection.

The governor felt his secretary to be in his way, and his actions comported with his sentiments. But the more evident that his resignation was desired, the more pertinacious did Mr. Hardin become.

Thus matters dragged along, unhappily enough, until September 1, 1846. On that day an order was made by the governor removing Mr. Hardin, stating, as grounds, that he had failed to reside at Frankfort, had neglected the duties of his office, and had abandoned it. The real grounds for the removal were not covered by any of these specifications. "The controversy between them," writes a mutual friend, "was an unfortunate affair growing mainly out of some hasty remarks. They were both special and honored friends of mine, and I believe I know more about the cause of it than any man now living. There was nothing in it to detract from the merits of either." * This excellent gentleman concludes with the injunction, "let it be forgotten;" but this affair, like other unpleasant facts of history, must be described, for, verily, it has its lessons. The writer of the above has furnished no other information, and the reader must determine the origin on other evidence.

Whatever the motive or excuse of Governor Owsley for this act, its effect on Mr. Hardin and any aspiration he may have had for the United States Senate, or, for that matter, any post of honor, was not doubtful. To have quietly accepted the judgment of dismissal, with all its expressed and implied reasons, was little less than personal disgrace, and, certainly, political ruin. If submitted to, it hopelessly crushed him, and this result the governor and his thoughtless advisers no doubt intended. But they evidently miscalculated either the power of the executive or that of the dismissed secretary, or else did not realize the nature of the issue that was made. Undoubtedly from this period (if he had ever been) Mr. Hardin ceased to be a senatorial quantity. He did not fail to realize that the highest ambition of his life had been stricken down at a blow. But at the same time there sprang up within him the spirit of the blind and goaded Sampson, when, at Gaza, he brought upon himself the ruin that destroyed his enemies. A reliable gentleman, a law student at Frankfort at the time, says that prior to this affair Mr. Hardin was regarded as sure of election to the United States Senate, and it was believed that persons desiring his defeat originated this attack on him. While the

* Hon. Martin D. McHenry

attack accomplished its purpose so far as Mr. Hardin was concerned, yet his friends (triumphing over his opponents) named Joseph R. Underwood for the senatorial succession, to the disappointment of those who conspired against him.

The governor appointed George B. Kinkead, Esq., of Versailles, a man of high character, to fill the supposed vacancy. Mr. Hardin, however, proceeded by writ of mandamus to compel the auditor of State to pay the salary of the office to him. The circuit court decided adversely and he appealed to the Court of Appeals, where his right was upheld, though this did not occur until after the action of the Senate. On the assembling of the Legislature the nomination of Mr. Kinkead was submitted to the Senate for confirmation. Mr. Hardin protested, and on that protest a committee was appointed to inquire and report whether the office of secretary of State was vacated by the alleged removal. That committee reported that there was no vacancy. On the question of adopting the report the whole subject was reviewed and debated in full session. The speeches of Francis Peyton, B. Mills, Crenshaw, and Mr. Hardin on the question have been preserved. It is not known whether a copy of the speech of Mr. Kinkead is extant.

Before laying the speech of Mr. Hardin before the reader, it may be stated that during its delivery great excitement existed at the State capital. Where so shortly before he had been a fugitive, he stood forth a hero waving the wand of an enchanter. The survivors of those who heard that speech are unmeasured in its praise. "The pathetic effect," says the late Andrew J. Ballard, "was great indeed, especially of that part describing his returning home in the night because of his daughter's sickness, and knowing as he approached that she was dead, by the darkness of her room and the light in the parlor window below." Says the lamented John W. Stevenson: "For power, interest, sarcasm, and originality, it was unequaled since the days of Edmund Burke. Never have I heard a speech whose popular effect was more overwhelming."

It is no exaggeration to say that he carried the Senate by storm. On reaching a vote, thirty senators voted against confirming Kinkead to eight in favor—a civic victory, all things considered, without a parallel. After this Mr. Hardin tendered his resignation, and Mr. Kinkead was again nominated and immediately confirmed.

The following is the speech of Mr. Hardin:

"Mr. Chairman, it is a subject to me of deep regret that I am compelled to appear before you and this crowded and august assembly in defense of

myself. Although I have been engaged in the practice of law upward of forty years, and in that time I have pleaded, perhaps, more causes and defended more men than any lawyer in Kentucky, yet I was never under the painful necessity of defending myself before. My situation is peculiarly embarrassing; I have the governor, and the whole power of the State, so far as he can wield, direct, and control it, arrayed against me. I have to encounter and contend with the disadvantages of a man who has been abused, villified, and traduced, by the hired and mercenary prints devoted to the governor and his party, for the last eighteen months. The suspicions however unfounded, of everybody, are pointed toward and rest upon me. I am bowed down with the weight of sixty-three years, and by a misfortune, laboring under nearly the total loss of my right arm, I stand here isolated and alone. I have no sons to aid and assist me, and by their presence and countenance to comfort and cheer me on. I had three sons—two are no more—they live in eternity. The third, you all know, is an able lawyer, an accomplished scholar, and an eloquent advocate. He is not here; he left Kentucky, last September was a year, to join the army. He is there now, without pay, without rank, fighting the battles of his country, where, of all the places on the earth, I would most desire him to be. But, Mr. Chairman, I ask no assistance, no aid, foreign from the merits of my cause. Before an American people, truth is all-powerful; it is omnipotent, and will prevail; although, as I said a moment ago, I was embarrassed, notwithstanding that embarrassment I felicitate myself, and congratulate my family and friends, that the hour has come when I can disabuse myself, in public opinion, and vindicate my character and reputation.

"That executive storm, like the distant cloud and thunder, that has been seen and heard by the public afar off, has at last approached; it is now hovering over my head, and the world will shortly see whether it has anything in it but a dark and menacing appearance, filled with wind alone, or is charged with, as far as I am concerned, all the elements of destruction.

"Mr. Chairman, the questions which present themselves for the inquiry and investigation of the committee are, in part, questions of constitutional law, and in part of controverted and contested facts, according to the issue made up between the governor, in his message to the Senate, which accompanies the nomination of Mr. Kinkead, and myself, in the memorial I had the honor to present to the Senate through my worthy senator from the county of Nelson. The main and principal questions are, first, is there a vacancy in the office of secretary of State; and if there be a vacancy, then is the nominee qualified to fill the office and perform the duties appertaining to it?

"I will dispose of the last question first, in a few words. I do not know Mr. Kinkead personally, but from the character given me by Mr. Charles A. Wickliffe and others, I have no hesitation in saying that he is eminently qualified; and were I a senator, and there was no other question but his

qualification, I would not hesitate to advise and consent to his nomination. But the preliminary question to be investigated is, is there a vacancy in the office of secretary of State? It is not my business to travel out of that question. All the other questions belong alone to the Senate.

"The governor, on the day he took the oath of office at the capitol, made out a commission for me as secretary of State, until the end of the next session of the General Assembly, and enclosed the same to me at Bardstown, in a letter written by himself. I was engaged at the time I received the commission in a will case of deep interest to the parties concerned, which lasted about ten days. As soon as I made my speech to the jury, I left the case unfinished, and came immediately to Frankfort; I had an interview with the governor; I then told him I could not accept the office of secretary of State unless he agreed to two things; one was, that I should leave Frankfort the next morning and finish the canvass as an elector for the State at large, and go to other States if necessary. The other was to continue my practice as a lawyer; for, I informed him, that I had to pay for others some thirty or forty thousand dollars, and that these security liabilities had fallen on me after I had parted with the principal part of my property to my children. To these two conditions he readily assented, and remarked: 'By all means finish the canvass as an elector, and go wherever you please.' To the second condition, he observed: 'I do not expect you to abandon the practice of the law.' I then took the oath of office.

"At the special instance and request of the governor, urged with great earnestness, I appointed Abram S. Mitchell my assistant secretary. He said Mr. Mitchell was well qualified, was poor, and, as the editor of a newspaper at Danville, called the *Tribune*, had advocated his election, and he wanted me to give him the appointment, because he felt under some obligation to him. I had before that time, and in reply to a letter of Mr. Boyle, who married the granddaughter of the governor, promised the appointment to Mr. Mitchell. The letter of Mr. Boyle said his appointment was desired by the governor. I did not know Mr. Mitchell. Mr. Ambrose Barbour, of Danville, my nephew, wanted the appointment; I knew he was well qualified; my family and myself felt anxious he should have it; but as the governor desired Mr. Mitchell to get it, I promised it to Mr. Mitchell by letter addressed to him.

"When I came to Frankfort in September, 1844, to take the oath of office, I found young Mr. Coleman in the office, acting as clerk. Mr. Mitchell was not in Frankfort. Mr. Coleman handed me two letters, one from Mr. Harlan, whose clerk in the office of secretary of State he had been, and the other from Robert Wickliffe. The letters recommended him in the highest terms, and spoke of his understanding the details of the business of the office. I was inclined to continue him as clerk. The night before I left Frankfort the governor came to my room at the Weisiger

House, and again pressed me to appoint Mr. Mitchell, which I did, in the form of a letter, and gave it to the governor, which appointment was in these words, viz :

"'*A. S. Mitchell:*

"'SIR: I, by these presents, appoint you clerk of the secretary of State, and direct you to enter your appointment on the executive journal. I also empower you, as clerk, to sign my name to all official papers which it may become necessary for me to sign, and further direct you to enter this authority, by a separate order, in the executive journal.

"'Signed BEN HARDIN, *Secretary of State.*

"'FRANKFORT, September 16, 1844.'

"I took the oaths of office on the 16th of September, 1844, and left Frankfort on the next morning. Between that time and the presidential election, I visited Indiana three times, and spoke to the people once at Mockport, once at Rome, and once at Oil Creek. I traversed Meade, Breckinridge, and Grayson counties, and the Congressional district now represented by Dr. Young. That district, at the August election, had gone for Butler by about six hundred of a majority. I left it about two months before the August election. Governor Owsley had fallen below the Whig vote, and I thought about four hundred votes; the balance I thought we could make up by great exertions. The Whigs, in some of the counties, had swapped Governor Owsley off for Butler, to get votes for themselves or friends. At the Presidential election the Whigs carried the district by about five hundred of a majority. It has remained a Whig district ever since. Clay and Crittenden are political stock that the Whigs never swap off. 'The distinguished Whigs,' at the August election, in 1844, were in market at every place of voting. Bad stock is always ready for trade, barter, or swap.

'As soon as the presidential election was over, I went to Taylorsville court and staid there three or four days, and came to Frankfort, where I found Mr. Tilford acting as assistant secretary for Mr. Mitchell, who, I understood, had gone to West Tennessee to visit his family. I remained at Frankfort a short time after the Electoral College met. I then went to Washington county to see my daughter, Mrs. Palmer, who I understood was sick. I staid something like a week; she got better, and I returned to Frankfort about one week before Christmas, and then, for the first time, I saw Mr. Mitchell to know him.

"In January, the governor nominated me as secretary of State, for the advice and consent of the Senate, which nomination was approved of, and advised and consented to by a unanimous vote of the Senate. On the 16th of January, 1845, the governor issued a commission and delivered it to me, which commission, gentlemen, reads in these words:

"'In the name and by the authority of the Commonwealth of Kentucky, William Owsley, Governor of said Commonwealth: To all persons who shall

see these presents, greeting: Know ye, that reposing especial trust and confidence in the integrity, intelligence, and ability of Benjamin Hardin, I do, by and with the advice and consent of the Senate, appoint him secretary of State of the Commonwealth of Kentucky, hereby investing him with full power and authority to execute and fulfill the duties of the said office according to law; and to have and to hold the same with all the *rights* and *emoluments* thereunto legally appertaining, *during good behavior and until the end of my administration.* In testimony whereof, I have caused these letters to be made patent, and the seal of the Commonwealth to be hereunto affixed. Given under my hand at Frankfort, on the 16th day of January, 1845, and in the 53d year of the Commonwealth.

"'By the Governor.

"'BEN HARDIN, *Secretary of State.* WILLIAM OWSLEY.

"'By A. S. MITCHELL.'

[SEAL.]

"I took the oaths of office. Mr. Mitchell's appointment as my assistant secretary was continued until the 1st of September, 1846, and after Mr. Kinkead was appointed signed my name as secretary of State in the presence of Mr. Kinkead and the governor, to sixty patents.

"The office of secretary of State was kept on the Capitol square; the business of that office was scarcely ever behind one hour, but was well done, and faithfully done, by me and my assistant up to the 1st of September, 1846. There is a remarkable fact to which I invite your attention, gentlemen, that the executive journal, which I now exhibit to you, shows there was no business in the office of secretary of State done, or to be done, from the 29th of August, 1846, until the 1st of September, 1846, and then the first order is the entry of my attempted removal, the appointment of Mr. Kinkead as secretary of State, and his appointment and continuance of Mr. Mitchell as assistant secretary. All those orders make but one order in the executive journal, and read in these words:

"'SEPTEMBER 1, 1846.

"'Whereas, Benjamin Hardin, by his failure, willful neglect, and refusal to reside at the seat of Government and perform the duties of secretary, has abandoned said office; and said office, in the judgment of the governor, has become vacant for the causes aforesaid, it is, therefore, declared by the governor, and ordered to be entered upon the executive journal, that the office of secretary has become, and is, vacant. Whereupon, to fill said vacancy, the governor this day commissioned Geo. B. Kinkead, Esq., to be secretary till the end of the next General Assembly of Kentucky, and Geo B. Kinkead, having qualified to his commission, entered upon the discharge of his duties.

"'Geo. B. Kinkead, secretary, by and with the advice and consent of the governor, appointed and continued A. S. Mitchell in the discharge of the duties of assistant secretary, which office he has heretofore been filling.'

"The dry and perhaps uninteresting details of facts which I have this moment given, Mr. Chairman, may be deemed by some unnecessary. I consider them important in the investigation of some of the governor's

charges against me. But my feelings are so alive to this contest that I may give them, in all probability, an artificial and factitious importance.

"I will now, Mr. Chairman, leave the further details of the facts to another part of this speech, and state the exact points in dispute between the governor and myself.

"The question of the power of the governor to remove me necessarily divides itself into two main and leading branches of inquiry. First: Are the charges alleged by him true in fact? and if all or any of them are true, do such as are true justify and authorize him to remove me? Secondly: Has the governor the power of removal for any cause whatever?

"Before I commence an investigation of the questions in the order proposed, it is necessary to examine the nature and form of our State government; and as cases and analogies are attempted to be deduced from the British government and that of the United States, an inquiry into the form of those two governments becomes also necessary, to show there is no likeness, no analogy between the governments of Great Britain and the United States and that of the State of Kentucky, so far as the power of the governor to remove the secretary of State is concerned and involved.

"A monarchy, in its original elements, is but the government of one man; and it matters not by what name he is called, whether king, emperor, or grand Turk; and all the rights the people have under such a government are but concessions made by him. He is the source and fountain of all power. Whatever has not been granted him by the people is reserved to him as so much power not parted with. Hence, in Great Britain, the repeated contests between the king and the people, or, in other words, between the rights granted and the rights reserved. Sometimes His Royal Majesty is pressing his prerogatives—which, in other words, are his rights reserved—upon the rights granted to the people; and when he does, he perils a great deal, as the melancholy fate of Charles I. and the expulsion of James II. can well testify. All men love power, from Bonaparte even down to Governor Owsley. In Great Britain all appointments are made by the king, and the office of the appointee is during the good pleasure of His Royal Majesty. Governor Owsley's doctrine, if carried out, amounts to the same thing—the appointee to hold during his good pleasure, to-wit, the pleasure of Mr. Mitchell.

"But to the power of the king of Great Britain, by an act of the thirteenth Parliament of William III., to which the king gave his assent, there is one limitation and restriction upon the power of removal—the judges are to hold their offices so long as they behave themselves well. Governor Owsley's claim, that is, his all-grasping pretension of declaring a vacancy, admits, in its consequences, of no restriction; like the mighty avalanche, it sweeps all before it.

"The Government of the United States is mainly national in its character and practical operations upon the people. In the Senate it is federative in

making laws and in the trial of impeachments, and, also, in the exercise of a part of the appointing power. There is, however, a marked and palpable distinction between the government of the United States and the State of Kentucky. One is a government composed solely of delegated powers. The other has all the powers and attributes of sovereignty that any people on earth can have, except those powers delegated to the government of the United States or in the Constitution of the United States inhibited to the States.

"The State of Kentucky, in the formation of its government, has conferred certain defined powers on its officers and functionaries, and the rest of the powers of sovereignty are reserved to the people. No officers in this government—no, not even Governor Owsley, 'the distinguished Whig,' however arrogant in office and vain in his station—can exercise any powers of government not granted to him. He has no royal prerogative powers. He is the creature of the Constitution and the law, just as much as a constable or surveyor of a public road. If such men as hang around him and bask in the sunshine of his patronage and favor should, by servility and flattery, cause him to forget his station, he must be taught to know it. There is one political maxim in our government which seems to be obsolete and forgotten by its officers, that the offices were made for the people, and not for the officers; and no man has ever filled an office in this State that requires more immediately to be made to learn that lesson than Governor Owsley.

"To sum up, in a few words, the distinctive principles of the government of Great Britain, the United States, and that of Kentucky, they are these: The reserved powers in Great Britain belong to the king. The United States have no reserved powers. The reserved powers in Kentucky belong alone to the people.

"Mr. Chairman, having, in a few words, called the attention of the honorable committee to some of the fundamental principles of our government, I will now invite their further attention to that part of the Constitution of Kentucky, relied upon by the governor, as conferring upon him the power to remove me from the office of secretary of State. The third article, from the eighth section to the fifteenth, inclusive, reads in these words:

"'SECTION 8. He shall be commander-in-chief of the army and navy of this Commonwealth, and the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised to do so by a resolution of the General Assembly.

"'SEC. 9. He shall nominate, and by and with the advice and consent of the Senate, appoint all officers, whose offices are established by this Constitution, or shall be established by law, and whose appointments are not herein otherwise provided for; *Provided*, That no person shall be so appointed to an office within any county, who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but, if it shall not have been so

long erected, then within the limits of the county or counties from which it shall have been taken; *Provided, also*, That the county courts shall be authorized by law to appoint inspectors, collectors, and their deputies, surveyors of the highways, constables, jailors, and such other inferior officers, whose jurisdiction may be confined within the limits of a county.

"'SEC. 10. The governor shall have power to fill up vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

"'SEC. 11. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In case of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested.

"'SEC. 12. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

"'SEC. 13. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he shall deem expedient.

"'SEC. 14. He may, on extraordinary occasions, convene the General Assembly, at the seat of government, or at a different place, if that should have become, since their last adjournment, dangerous, from an enemy, or from contagious disorders, and, in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

"'SEC. 15. He shall take care that the laws be faithfully executed.'

"If the governor has any power to remove the secretary of State, it must be found in those parts of the Constitution which I have read. There is no direct power given him. He claims it by implication, as an incident to some granted power. This power, by implication, in the executive head of the government, is a most dangerous one. The exercise of it is to be watched by the people with great care, and guarded against with the most vigilant and suspicious jealousy. No latitude is to be given the executive in the selection of his means to carry his expressly delegated powers into effect, beyond those that are plain, direct, and absolutely necessary, and such as are usual and customary. Because, if the people allow him to select means to carry his express powers into effect, other than those absolutely necessary, then there is no limit—no line of demarkation. For then he can press and push his constrained construction of incidental powers to such an extent as to swallow up every other department in the government, and have the legislative, executive, and judicial departments, and all the officers belonging to them, prostrate at his feet. His power will, like the rod of Aaron, swallow up the balance of the government; and then he can say, as Bonaparte said to his Senate, when they began to talk of the government, 'hush your nonsense; I am the government!'

"Mr. Chairman, after I have progressed thus far in the argument, and laid down and endeavored to establish certain political maxims and principles, which I consider applicable to the questions now under consideration,

I am brought to the first main branch of the two propositions I intend to discuss.

"First: Are the governor's charges of official delinquency against me true, in fact? If not all true, how many are true, and what are the official responsibilities growing out of those that are true?

"The first specification which I shall notice, in the charges of the governor, reads in these words: 'Moreover, when it is called to mind that, while in Frankfort he, for weeks in succession, kept himself at a distance, and held no intercourse with the governor.'

"This charge is denied by me. What is the proof? Last August was one year ago, on the third day of the election, we parted friendly, after I gave him an opinion in the case of Dr. Baker. The governor had, before that time, requested me to examine the record, and investigate the question, both of law and of fact, involved in the case, which I had done with great care. When I say we parted friendly, it was so on my part, and seemed so on his.

"I went to the Marion Chancery Court, remained there about five days. I then passed through Bardstown and went to Brandenburg, to the Meade Chancery Court. At the termination of that court, which continued about one week, I returned to Bardstown, and attended the Nelson Circuit Court. From there, as soon as the court was over, I returned to Frankfort. The governor refused to speak to me, and when at first I attempted to approach, he would wrap himself up in his cloak, proudly stalk off with a gloomy, repulsive grandeur that has never been equaled, except by Ajax, when Ulysses attempted to speak to him in the world below.

"That the governor refused to speak to me was proved by Jeptha Dudley. Mr. Mitchell attempts to account for that by swearing that respectable gentlemen from Marion informed the governor that I spoke in harsh terms of him in that place, when speaking of the mob. When I asked Mr. Mitchell, 'do you know the men who gave the governor the information?' his answer was, he did not. The question was then put to him, 'Do you know that any person gave the governor such information?' he replied, he did not; but the governor told him so.

"It is a matter of no importance, as to the truth or falsehood of the charge against me in the specification of the governor, whether the governor received such information or not from Lebanon. It goes to prove incontestibly that he would not speak to me, and fortifies what Mr. Dudley said, and also to prove that Mr. Mitchell is bold, adventurous, and unscrupulous in what he states on oath when he swears to the respectability of men he does not know, and that they said so and so when he did not hear it.

"We remained in the situation of non-intercourse so far as not to speak to each other, although we did our official business in the same office, until the 3d of January, 1846, when all our difficulties were amicably settled. He

offered me his hand, and I gave him mine. We made friends, talked as usual, held private and official intercourse with each other, without a single jar or cold look on my part, until we parted on the 7th of August, 1846. We sat in the same room together and within three feet of each other for ten days before we parted in August last.

"Mr. Mitchell stated that the governor entertained the opinion that after our reconciliation last January my feelings were not cordial, not that I had said or done anything objectionable. So, I suppose, I am to be punished for my feelings and not my actions. The Cæsars of Rome, who were in their day the scourges and tyrants of the world, in their endless persecutions for violated majesty never considered their sacred majesty violated by mere thoughts or feelings unexpressed. It is alone for Governor Owsley, in the plenitude of his power and imaginary greatness, to punish feelings and thoughts.

"As Mr. Mitchell has cut an important figure in the present administration—and I consider him the prime mover in this malicious and unholy prosecution against me—a short description of this young gentleman may be useful, and perhaps necessary.

"A few years ago, as I am informed, he arrived at Danville, a very young man, from near Randolph, West Tennessee, and entered as a scholar in Centre College. How long he remained there, I do not know; and whether he completed his education or not, I have not learned. What his vocation was before he came there, I only know from rumor; it is a matter of no importance. When he left college he either established or became concerned in the editorial department of the *Tribune*, a paper in no wise celebrated for the ability of the editor, but somewhat famous for the slander and defamation with which it was filled. That paper has advocated the governor's nomination in the Whig convention, and threatened a secession of a part of the Whigs from the main body, if the convention did not nominate Governor Owsley as the Whig candidate for governor. The Whigs believed the paper spoke the sentiments of Governor Owsley, and permitted themselves to be bullied into his nomination.

"What was the political result of that nomination? The answer is plain and obvious. By his unpopularity he ran about five thousand behind the Whig strength in Kentucky, which made such an impression upon the balance of the United States that, in the opinion of the best informed men in Kentucky, it lost Mr. Clay's election and ruined the Whig cause, perhaps, forever. During the canvass the leading Whigs saw the danger that surrounded and environed them round about, growing out of the fact that Governor Owsley was running below the Whig strength, and increased their efforts, made such exertions as were never made before, and saved his election. As to himself, although he delights in having Mr. Mitchell call him 'the distinguished Whig,' he was as helpless as a child. If the ruin of the

Whigs in Kentucky was not completed by his running for governor, I think I hazard nothing in saying he will put a final finish to the party before he goes out of office, if the Whigs identify themselves with his administration.

"I have remarked to the committee before, how and in what manner Mr. Mitchell became my assistant secretary. The governor took him into his family, gave him his confidence, rendered me as much a cipher in the office of secretary of State as possible. He has been to me, from the time of my appointment until my attempted removal, haughty, supercilious, and arrogant; his manners extremely offensive, and to the governor servile as a spaniel. He has been a spy upon me, treasuring up every word I uttered, and then whispering them to the governor in a mutilated, distorted, and garbled state, thereby making me mean one thing when I intended another, for the sole purpose of making mischief, in the hope that I would leave the office and he would obtain it; and if I had resigned quietly he would have got the office if the governor could have got his nomination confirmed. I was frequently urged by my friends to dismiss him on account of his insolence and rudeness to me. I declined to do it; first, because he performed his duties well; and secondly, I knew it would displease the governor, and I did not wish to give him any offense. His fondness and affection for Mr. Mitchell have been so extravagant as to become an infatuation, a morbid disease of the passions. He believes him a prodigy on earth, only given to the world by the Almighty to show to what perfection he can make a man. Mr. Mitchell has, in truth and fact, controlled the government, so far as the powers of the Executive would go, from the commencement of Governor Owsley's administration even unto this day. The worst part of the story is, he does not delight in doing good, but evil. He is eternally studying how to get offices and employments for himself and a few families, and to do mischief to the residue of the people of the State. He does not study the honor of Kentucky, but how to degrade and dishonor her. Not contented with the humiliation of a lad from West Tennessee governing her, but how to make the fact notorious that her disgraced and humbled condition may be seen by and known to the world. Thank God, however, such men as Mitchell and Governor Owsley can not put one dark spot upon the glory of Kentucky.

"The history of the world furnishes no parallel to Governor Owsley's strange and unaccountable infatuation for Mr. Mitchell but that of James I. king of Great Britain, first for Robert Carre, in 1609, and afterward for George Villiers, in 1615. In 1609, at a match at tilting, Carre, then twenty years old, of handsome person, fine address, and polished manners, was selected to present to the king, as part of the ceremony, his buckler and device. His horse threw him and broke his leg. The king had him carried to his palace and attended to by his physician. When he recovered, he made him the depository of his secrets; gave him his whole confidence; created him Viscount Rochester, and soon after Earl of Somerset, with estates and

salaries amply sufficient to support his titles and dignity. He controlled and governed the empire of Great Britain when only twenty years of age, without talents or information, although a man of the greatest talents, such as Cecil, Earl of Salisbury, was prime minister, with an able cabinet to assist him.

"In the year 1615 the ministry met with a young man, twenty-one years old, by the name of George Villiers, in the bloom of youth, finely formed, and exceedingly handsome. They introduced him to the king, as the only way of counteracting the influence of Somerset. The king became more infatuated with Villiers than he had ever been with Carre; promoted him from one office to another, and at last made him Lord High Admiral of Great Britain and Duke of Buckingham. His new minion imperiously controlled the ministry, the king, and Great Britain until the death of James; and then had the same uncontrollable influence over Charles I., son of James; pushed him on into such desperate and reckless measures as terminated, first, in the death of Buckingham, and then in the dethronement and death of the king.

"The analogies do not hold good in this—that Carre and Villiers were handsome men; but it must be recollected that James and Charles were kings; Governor Owsley falls as far below those splendid monarchs as Mitchell does Somerset and Buckingham in personal beauty and accomplishments. But all three are alike in this: Somerset and Buckingham won their way to favor, in part, by flattery and servility. So does Mitchell. They did nothing else but deeds of mischief. So did Mitchell. He has fairly won the title of Duke of Buckingham, and by no other name ought he to be styled, called, and known.

"Mr. Chairman, His Grace, the 'duke,' said in his evidence, that after the reconciliation between the governor and myself, on the 3d of January, 1846, the governor thought my feelings were not cordial toward him. My feelings at first were as cordial and kind as they ever were, and at one time there was not a man on earth for whom I entertained kinder or better feelings. But after the reconciliation he and his family, in a cold-blooded and deliberate manner, insulted me and treated me with indignity, and then had the unfeeling impudence to boast of it. Two or three days after the reconciliation His Grace informed me that the governor requested him to say to me that I must excuse him for not inviting me to the palace that winter, either to dinner or the levees; that his daughter, Mrs. Goodloe, and his wife objected to my coming on account of my calling Mr. Goodloe, in a card I had published a few days before, a liar and scoundrel. I thought strange of the message, that the governor should permit the ladies of his family to interfere and dictate to him who should or should not be invited to official dinners and parties of official ceremony. I replied to the communication in these words: There can be no difficulty on that score; I have determined that on account of the recent death of my daughter, to attend no dinners or

parties this winter, and I will return that answer to his invitation. No invitation came. I then understood the plan of operations by the governor, his family, and His Grace—that it was an arranged and concerted plan to insult me. I said not one word about it, and cared nothing.

"In a week or two I could occasionally hear that the governor was remarking that I was unworthy to be invited to his house, and that the females of his family were, in the fashionable circles of Frankfort, making the same remarks. I then became thoroughly convinced that the whole was a wicked and malicious contrivance to give them a pretext for slandering me. I know the whole family, including His Grace, delighted in doing me those kind offices. I knew what I heard was true, as to what the governor said. I got it from gentlemen of undoubted veracity; and as to what the females of the palace said, I obtained it from a source entitled to the fullest credit.

"This winter two years ago, I taught, for the pleasure of it and nothing else, a class of young ladies, in my office, for about three months, from seven o'clock to half after nine, unless I was engaged in the secretary's office, ancient history, together with ancient and modern geography, and the poetical works of Homer, translated by Pope, and the works of Virgil, translated by Pitt, and united with these poetical works the Pantheon, also the geography connected with the Bible and Testament, explained by the maps of modern travelers, such as Stephens, etc. The class was composed of young ladies of the best families in this town. They are now the pride and ornament of the polite and fashionable parties of this place. Nay, I can say more for them, with truth, that they are the smartest and most intelligent set of girls I ever saw in one class. Their minds are sharp, keen, and bright as the finest-polished sword that was ever made at Toledo or Damascus. I can take them, this day, into the Representatives' Chamber, and examine them on geography, ancient and modern, against the governor, and they can beat him nine times out of ten. They can tell that the river Nile is in Africa, and the Cape of Good Hope is south of the Equator.

"But I am yet to learn, I repeat it again, that a man is to be punished for his thoughts and feelings. In the reign of the Jacobins in France, with Robespierre at their head, they never carried their bloody and extravagant doctrine of crimes into men's secret thoughts and feelings. I will close my remarks on the first specification that I have referred to, by pronouncing it untrue; it is pitiful, frivolous, trifling, and malignant.

"Another specification in the charges exhibited against me by the governor reads in these words: 'And, when at the seat of government, he has willfully failed and neglected to bestow the attention and perform the duties which were incumbent on him, as secretary, to perform.'

"I deny that charge, and call on the governor for his proof. He has offered none—no, not one word—in support of it. If it were the fact,

Mitchell would know it; and if he knew it, he would be ready and prompt to state it in the strongest terms possible. I call upon you, Mr. Chairman, and this honorable committee, to bear in mind what proof has been offered by me to disprove the charge. Mr. Macurdy, one of the clerks in the Register's office, swears that, when in Frankfort, I attended to my duties in the secretary's office with great punctuality. So does Colonel Davidson, the treasurer, with whom I boarded. Mr. Cox, a member last session, from the county of Fleming, states he frequently called at the secretary's office, and always found me in place, attending to the duties of the office, and accommodating the members of the Legislature by waiting on them and hunting any laws for them they might want; and if the laws the members wished to see were not in the secretary's office, I went to my private law office and got such laws as they wanted; and, in fact, threw my private law library open for the use of the Legislature; which is, Mr. Chairman, the most extensive, I expect, of any law library in Kentucky, besides some three hundred volumes on political subjects. The same facts were proved by Mr. Parker C. Hardin, who is a senator, and has been in the Senate for six successive years, and who had every opportunity of knowing. There never was a charge exhibited against any man so unfounded. I do verily believe, when in Frankfort, if the Legislature were not in session, I did not lose two hours a day, from the rising to the setting of the sun, that I was not there attending to the duties of the office; and during the sessions of the Legislature I was there from morning to night, and sometimes after night—Sundays included—unless I went to deliver some message to one or the other House of the General Assembly. All the officers on the capitol square attended well to their official duties; however, none excelled me but Elisha Macurdy, and he is never out, day or night, unless when he goes to eat.

"The next two specifications made by the governor against me read in these words: 'He has willfully failed and neglected to reside at Frankfort, the seat of government.' 'He has at different times willfully absented himself from the seat of government for weeks and months in succession, and part of the time out of the State, thereby putting it out of his power to perform any of the duties of secretary.'

"I shall, Mr. Chairman, consider both of these charges together. I can not well respond to them separately; for if I do, I will have to repeat, when answering the second specification, a great many things which I shall be compelled to state when responding to the first.

"Mr. Chairman, a full answer to those two specifications would take a much longer time than I would desire. But the main and principal accusations of the governor and his little party around him are based on them. In defending myself before this honorable committee, the Senate, the country at large, and posterity, if it shall ever hear of or take interest to read of Governor Owsley's administration (but of that there is some doubt), my duty

imposes upon me the necessity of begging the kind indulgence of the committee to bear with me in the somewhat minute details of facts I am about to give. They may be deemed by you not essential. I deem them remotely material, at least.

"The 1st of April, 1804, when I was twenty years old, I commenced the study of the law with Martin D. Hardin, in Richmond, Madison county. At the April circuit court I became acquainted with William T. Barry, Samuel Woodson, George M. Bibb, John Pope, and William Owsley. I was humble and obscure. Those gentlemen paid me some attention. I was gratified and much pleased at their notice of me. Those little acts of kindness won my youthful heart, when all alive to first impressions and sensibilities. My friendship continued unbroken and uninterrupted with Barry, Pope, and Woodson until their deaths. I am proud to say that it continues with George M. Bibb up to this day. I became more intimately acquainted with William Owsley than any of the other gentlemen. His manners were soft and apparently kind. He was then about four and twenty years old. I saw he had no education, and labored under great disadvantages for want of it. If I recollect right, he told me he had ridden deputy sheriff in the county of Garrard, and not long after he quit the office of deputy sheriff he had commenced the practice of the law. I left Richmond the 1st of April, 1805, and went to Bardstown, and there read law with Felix Grundy until I obtained license to practice law in June, 1806. I was elected to the Legislature by the people of Nelson county in 1810, and likewise in 1811. In the session of 1811 I met William Owsley. We had not seen each other from the spring of 1805. Adversity frowned upon us when we parted; fortune smiled upon us when we met again. Our old friendship was renewed with heartfelt greetings. I declare I had great pleasure in meeting him. I had a real affection for him.

"About the year 1813 he was made a judge of the Court of Appeals. I attended that court and pleaded law before him. I was elected to Congress in 1814, 1818, and 1820, and then declined a re-election. In 1824 I was in the Legislature, and I think fortunately for Governor Owsley I was. The New Court party bore down upon the Court of Appeals for daring in a fearless manner to do their duty, their whole duty, and nothing but their duty. I formed one of that small but determined phalanx that defended Judges Boyle, Owsley, and Mills. Then my voice was heard in the Hall of Representatives in bold, determined, and manly tones, defending the old judges, as they were called, the constitution, and, what was consoling to my heart, my old friend William Owsley. Political war raged for two years. I was in the battle from the commencement to the end. I devoted my time to the cause of the old judges. I spent my money and shed my blood at the capitol door in its defense. The first year the New Court party came within one or two votes of obtaining two-thirds of each House to remove the judges by

address. By the next year the storm of popular frenzy has spent its force and passed off. Reason had resumed her empire over man. The old judges were safe and the violated constitution restored to its original health and vigor; nay, became more robust by the fiery ordeal through which it had passed. Judge Owsley ought to be the last to ever forget the necessity of a fair constitutional trial. The two-thirds principle contained in our constitution saved him until the angry passions of the people subsided, and then all was right.

"Suppose the then governor of Kentucky, General Desha, had pursued the same arbitrary course with him, Boyle, and Mills that he is now attempting against me; that is, to remove me, or attempt to do it, without notice or trial, what would have been the result? He would have been removed and degraded in the eyes of the world—just where his malignity wants to place me—and the constitution would have been broken and violated. But Governor Desha and the New Court party gave the old judges a fair constitutional trial. Truth and justice triumphed, and all ended well.

"Mr. Chairman, at the time of the contest of the old and new court, if a prophet, such as Elijah and Daniel of old, or one like Samuel, had risen from the dead and told me that, twenty-two years after I had pleaded for the old judges in this hall, and was cheered by the shouts of a crowded audience, I should be compelled, in the same place, in my old age, uninfluential, alone, and unprotected, to defend myself against the attacks of the same Judge Owsley, I would not have believed them. Nothing less than an angel from Heaven could have obtained credit with me for such a prediction. The crowd, by their shoutings, then proclaimed I was on the right side; they give me the same encouragement now. They are indignant at the unhallowed persecution carried on by the man who owes me more for his present elevation than any man in Kentucky, and is using his position and power to crush me. What malignity—how barbed with ingratitude.

"After the storm raised by the New Court party had ceased, and a clear political sky was over our heads again, Judge Owsley left the bench of the Court of Appeals and resumed his practice as a lawyer. We met occasionally at the bar, and about the year 1831 we met again in the Senate. I think we served two years together. I then resigned my seat in the Senate and went to Congress, where I remained until 1837. I left Congress when I had no opposition; my private pecuniary affairs required it—nay, demanded it most imperiously. I resumed my practice at the bar with efforts proportioned to my moneyed embarassments, which were, on account of security liabilities, very great.

"Four years ago this winter I came to Frankfort. I was sent by the people of Bardstown to prevent, if practicable, the division of Nelson county. Judge Owsley and his son-in-law, Mr. Goodloe, were then very busy electioneering; and, as some said, writing preambles and resolutions,

and sending them to distant counties, recommending the judge as a candidate for governor; and rumor further reported that they not unfrequently returned proclaiming that they had spoken the voice of the county to which they were sent, when nobody in the county, except some three or four partisans of the governor, ever knew they were there.

"One day, within a day or two after I arrived at Frankfort, Judge Owsley approached me, as his old friend, to go in for him as a candidate for governor, and assist him to obtain the nomination of the Whig convention, which was expected to meet the fall after. The first application was in the Mansion House. I then told him I could not go in for him unless he came under certain pledges to me. We were then interrupted, and said no more at that time. A day or two afterward he asked me to go to his law office. I went. I then told him I would go for him on one condition; and unless he would agree to that, I would not. The condition was, to know no man's politics when he was an applicant for office; that the politics of the General Government had been introduced into the administration of the State governments unnecessarily, and by that means the State lost the talents and services of one party or the other. I pointed out how the different governors had administered the government, beginning with Governor Desha, down to Governor Letcher; and that if he would set the example of administering the government without reference to party, he would do his country great service; it would be followed by other governors who would succeed him, and by that means party strife and animosity would cease in Kentucky. Judge Owsley then pledged himself to me in the most solemn manner, if elected governor, to know no man's politics in the distribution of offices. I then told him I would ride over Kentucky and make speeches for him; and that I must make that pledge for him in all my speeches. He told me to do so. The same day I went and informed Parker C. Hardin, my nephew, what had passed between Judge Owsley and myself, and said to him these words: 'Let us all go in for him.' I had reference to my family and connections; for there is no man in Kentucky that has, by blood and affinity, so large a connection—a large number of them are men of talents and fine public speakers.

"After this conversation with Judge Owsley I returned to Bardstown; saw my son, Rowan Hardin, who was at that time an editor at that place. His paper immediately commenced advocating the nomination of Judge Owsley as the most available candidate for governor to be run by the Whig party, at the same time speaking in high terms of his fitness and qualifications for the office. That paper continued to advocate his nomination until the convention met at Louisville. Every exertion was made by me that I could make to throw into the convention delegates friendly to Judge Owsley. A number of my relations were delegates, and took an active part in nominating Judge Owsley for governor, and to favor his election I was nominated as an elector for the

State at large. The next day after I heard of my nomination I addressed the people of Washington county. From that day until the August election I quit all private and professional business, and devoted my whole time in riding and speaking in favor of Judge Owsley. I became alarmed, for, notwithstanding the Whigs were in a majority of about nine thousand in the State, the judge's election dragged heavily along. Clay and the Whig question had to take him in tow, and both have been ruined by him. I devoted nine months of my time to his election, when my practice as a lawyer has been worth five thousand dollars a year for more than thirty years past. My pecuniary sacrifices were met by me cheerfully, and weighed nothing when compared with his success and that of the Whig cause. I rode over at least fifty counties, addressed the people sometimes twice a day, and organized the county by a convention of prominent Whigs at night. This I say to you, gentlemen of the committee, not that you are ignorant of it, not that the State does not know it, but that posterity may duly appreciate the present conduct of Governor Owsley, when the little sycophants of the day, that now flutter around him like butterflies in the sunshine, have disappeared forever.

"My son, Rowan Hardin, at my instance, not only devoted the columns of his newspaper to Judge Owsley's success, but also for two months rode and addressed the people every day. What rewards do we get? The father is, by the governor, persecuted almost to death. The son is far off, in a distant land, and can yield him no assistance. This is the judge's way to liquidate and cancel debts of gratitude. It is a cheap way to a man who lacks honor, but impossible to a high-minded, honorable man.

"After the election of Judge Owsley was over, when it was pretty well ascertained that he was elected governor, I addressed him a letter, stating my willingness to act as his secretary, and assist him in the administration of the government, stating in the letter that I would move to Frankfort as soon as I could conveniently do it. In a few days Judge Owsley answered my letter, stating he was pleased and gratified to find that I would accept the office, and that I should have it. In a day or two after I received a second letter, appointing the day for me to meet him in Frankfort. About a week after that I received by the hands of William Anderson, the grandson of Governor Owsley, a third letter, stating that some of his Whig friends had represented to him that my appointment would be unpopular, and that he had concluded not to give me the appointment of secretary of State. To that letter I returned no answer. In four or five days after that, I received a fourth letter from Governor Owsley, dated at Lexington, requesting me to meet him in Frankfort; that upon further reflection, and upon conversing with some Whigs in Lexington, he had altered his mind, and determined to give me the appointment of secretary of State. I returned no answer to that letter, and did not meet him. The day he was sworn in and took the oaths

of office, he issued a commission for me as secretary of State, and inclosed it to me, as I have heretofore stated.

"I want you, Mr. Chairman, and gentlemen of the committee, to bear in mind what was proven by Mr. Wintersmith. That the day before the third letter was sent to me, Harry I. Bodley and William B. Kinkead left Lexington, and on the next day he saw them in Danville; and saw them go into Mr. Boyle's office, who had married a sister of William Anderson; which was Saturday. That day he saw Governor Owsley in Danville; and that day William Anderson must have left Danville with the third letter, for he got to Bardstown about three o'clock the next day, which was Sunday. The distance from Danville to Bardstown is forty-six miles. These facts go strongly to show who those Whig gentlemen were that told the governor my appointment would be unpopular. These same Whig gentlemen, with the kind assistance of his grace, the 'duke,' who is the son-in-law of Mr. Bodley, have haunted me ever since, like the ghost or specter did Brutus at Phillippi. Hence, the desire of Governor Owsley to get me out of the office, and, hence, the difficulty of pleasing him and the 'duke.' There is nothing I could do would please their mightinesses, because George B. Kinkead must be secretary of State, at all events. You all recollect how he was smuggled into the office last winter for a few days. How Mr. Mitchell came to be appointed, and where I was from the time of the appointment until after the Presidential election, I have already stated.

"I remained in Frankfort, in the winter of 1845, about ten days after the end of the session of the Legislature. I then left for the Nelson Circuit Court. I remained there three weeks, and went to the Hardin Circuit Court, which commenced the third Monday in March. On Tuesday of the second week of the court, I received a letter from Governor Owsley; for I had, when I left Frankfort, told him the courts I was about to attend, and when; and if he wanted me, to write to me. The letter requested me to come to Frankfort to sign State bonds and coupons. I left Hardin court immediately—Mr. Helm states that fact—two weeks of the time yet unexpired. I passed through Bardstown, directing my office there to be broken up, and my law and political books to be sent after me to Frankfort, which was accordingly done. These facts are proven by John Morton. I got to Frankfort three or four days after I left Hardin court, and remained there until the fourth Monday in April, making about five weeks.

"During my stay in Frankfort that time, I signed one hundred and fifty State bonds, and sixty coupons for each bond, making nine thousand one hundred and fifty bonds and coupons. I lost two weeks of the Hardin Circuit Court, one week of the Bullitt court, and two weeks of the Marion Circuit Court, which was a loss of at least two hundred dollars a week.

"The fourth Monday in April, 1845, I went to Washington court; remained there about four days. I went from there to the Meade Circuit

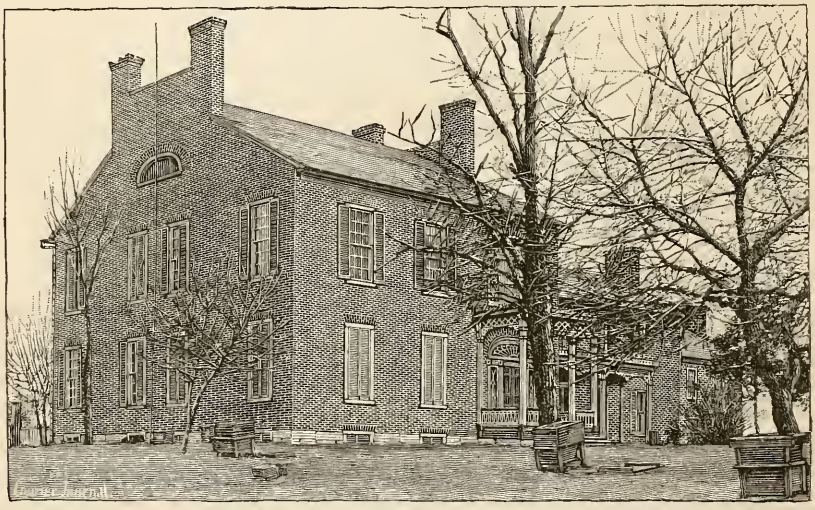
Court; staid about one week; then I went to Vicksburg, took the railroad, and went immediately to Jackson, and the next morning entered the mandate of the Supreme Court in the case of Vick's heirs against Prentiss, etc., and returned the same day to Vicksburg, and the same evening took a boat and came to Kentucky. When I got to Bardstown, I found that Mrs. Hardin had removed our daughter to Bardstown, and that she was expected to die every day; it was during those cold rains which frequently come in May.

"I wrote to Mr. Mitchell and requested him to show the letter to Governor Owsley, stating where I had been, and stating that I was then at Bardstown waiting on my daughter, and that I would return to Frankfort as soon as I could leave her. Mr. Mitchell wrote back immediately that he had shown the letter to the governor; that they sympathized with me on account of my daughter's bad health, and requested me not to leave her until she got better. As soon as the summer set in she got better, and I came to Frankfort. All appeared right. I heard no complaint. I was here during that summer, except when I went to court. I was not at Bardstown during the whole year, except when the Nelson Circuit Court was in session, more than three weeks. This is proved by Mr. Morton.

"Mr. Mitchell swears that in the letter the governor wrote to me at Elizabethtown, he urged me to move to Frankfort. I do not believe that was in the letter. All he said in the letter was, to come to Frankfort to sign State bonds and coupons. I intended, at that time, to move to Frankfort, where I had opened an office, and engaged in law business in all the courts in Frankfort, and some of the adjoining counties. I shortly after engaged boarding for myself and wife with Mr. Stealy, at the Mansion House. The governor stated in his message that I had been gone for months together, and that I had been in the State of Mississippi, thereby intending to make the impression that I had been for months in Mississippi, when he knew that was not so. How did he know that I had been in Mississippi? From my letter to Mr. Mitchell, which was shown to him; and that letter stated I had not been there more than a day or two. When he stated my absence, why did he not state that I remained with my daughter, who was then at the point of death, by his permission? And why did he use the word months, when he knew that whole time I was gone from Frankfort did not exceed five or six weeks? The answers to these questions are obvious—it is in keeping with the whole message—that is, not to give the facts fairly as they are.

"I left this place in August, 1845, by the advice of the governor, and went to the Marion Chancery Court, and from there to the Meade Chancery Court, and from there to the Nelson court. At the end of that court I returned to Frankfort, and remained there until the 5th of October. On the night of the 4th it commenced raining; at two o'clock the wind shifted to the north; the rain continued, but the weather was cold. When I went

to breakfast, I told Colonel Davidson's family that my daughter had died that night; that I knew it from the change of the weather. After breakfast I got on my horse in the rain, without great coat, cloak, or umbrella; rode to Bardstown — fifty miles — without eating, drinking, or getting off my horse. I got to my gate just after dark, and looked through the shade trees to the window of the room I left her in; there was no light; all was dark; I looked below to the parlor, where my other children had been laid out; I saw a dim and gloomy light. The melancholy tale was told. My heart sank within me. I went to the house and mingled sorrow and grief with my family. I followed her mortal remains next day to the grave. I was unfit for business for some days. I recovered my spirits a little, and returned to Frankfort about the middle of November, where I remained



BEN HARDIN'S HOME.

until the 24th of February, 1846. On that day the Legislature adjourned. After the adjournment I went to Bardstown. When I got there the Nelson court was in session. I attended the Nelson court the balance of the term. I attended the Hardin court, and then went to Bullitt court, staid one week, and returned to this place about the 10th of April. I staid here about two weeks, and went to Washington court; staid one week; then went to Meade court, and staid about a week; then to Spencer court, which commenced the third Monday in May, and there I heard the call for volunteers, and came to this place about the 20th. I remained until June; went then to the chancery court in Nelson; from there to the chancery court in Hardin. I attended a call court in Marion for the trial of Thomas H. Chandler. From there I came here about the 1st of July, staid until the 11th, and then I went to the chancery court in Washington. I remained there some-

thing like a week; left there, and came by Harrodsburg to this place, where I remained until the 7th of August. The last of June, I had two young negro men, who engaged in a fight. One stabbed the other seven times, and left him apparently dead, stole a horse, and fled to the county of Larue, where he had been raised. I got Mr. George Dixon to go in pursuit of him, and to advertise him. He was, however, unsuccessful. I heard the negro was at the Ætna Furnace, with some of his relations, who belonged to Mr. Churchill, who owned the furnace. I went to Larue and Hart in search of him; from Hart back to Larue, and from there to Hardin; then to Grayson, and from there to Breckinridge, and struck the Ohio at Stephensport, and then up the river to Meade. I there learned that the horse the negro stole and rode away was posted near Flint Island. I then became satisfied he had crossed the Ohio. I gave up further pursuit and returned to Bardstown. When I got back I learned, in about two days, that the governor had removed me from the office. My situation is rather a novel one. I have lost my negro by reason of not pursuing him in time, and I have lost the office of secretary of State for pursuing him out of time.

"The governor says: 'And though occasionally present, he was not, after his appointment, in Frankfort, except while the Legislature was in session—in all not more than about five months of the time.' I came to Frankfort each year, about the middle of November, and never left until the 24th of February; that includes the time the Legislature was in session. If he means five months exclusive of those periods, which is the governor's meaning, I suppose, then I apprehend he is not much wrong. These two sessions, commencing with the time I came, and calculating up to the time I went away, would make about six months and one-half; add that to the five months, would make eleven and one-half months out of one year and nine months and a half. Because the first two months, while I was a candidate for an elector, the lost time in consequence thereof ought to be deducted out, as by an agreement with the governor, before I accepted the office, I was to be absent until the presidential election was over.

"I would inquire, if even the secretaries of State, whose families reside in Frankfort, were in the secretary's office more hours, in one year nine months and a half, than I was? In the secretaries I will include Judge Owsley, who was secretary to Governor Morehead. He practiced law in the Court of Appeals, General Court, Federal Court, and Franklin Circuit Court, and also in the Garrard Circuit Court, and got a full practice in all the courts he attended. He, it is true, I have no doubt, was in Frankfort more hours each year than I have been, but he was in his law office and in the courts a great part of that time. Was Mr. Harlan, who was secretary to Governor Letcher, in the office of secretary of State more hours than I have been? I should suppose not. He practiced law in the Court of Appeals, Federal Court, General Court, Franklin Circuit Court, and also in

the Boyle, Mercer, Anderson, and Jessamine Circuit Courts, and got a full practice. Now, count the number of days those courts were in session, and the time he would be employed in his law office, in Frankfort, and engaged in the courts at Frankfort, and then you will perceive he did not devote as many hours to the secretary's office as I did, within the same time. I think I may say the same thing in reference to the other secretaries who were lawyers and attended to their professions. The only difference between Judge Owsley, Mr. Harlan, and some other secretaries and myself, is this: that when I attended the courts, I was off at a distance, and my wife was not living here—they lived in Frankfort, and their families were here. When I was here I was always in the secretary's office; when they were here, they were in their law offices, and with their families.

"After I was secretary, I discontinued my practice in Mississippi, in the winter, and also quit practicing law in Breckinridge and Grayson counties. These facts are proved by Messrs. McFerran, Smith, and Helm. I lost half of the term times of Marion, Washington, and Bullitt counties. These facts are proven by Parker C. Hardin, Doctor Palmer, and Henry C. Thomas. I lost two weeks of the Hardin Circuit Court, and part of the two terms of the Nelson Circuit Court. I have no doubt I could prove by lawyers well acquainted with my practice, that, in their opinion, I have lost two thousand dollars a year since I have been made secretary of State, by quitting some courts and only partially attending others. The law business I undertook in this region of country I gave up for reasons which I will give in another part of this speech.

"I contend, Mr. Chairman, that since the presidential election, up to the 1st of September, 1846, I spent as much time in the secretary's office as any other secretary who practiced law; and I made heavier sacrifices in doing it than any other secretary. I am well aware that Mitchell states that from the end of the last Legislature up to the 1st of September, 1846, I was here but three times. That is not a fact. I was here in April; stayed about two weeks here in May, from the 20th to the 1st of June; and here about the 1st of July, and stayed until about the 11th, and returned again the 24th, and left the 7th of August, 1846.

"How does Mr. Mitchell know the time I was in Frankfort, and how long I stayed each time? Did he keep a memorandum of the times? When questioned on that, he said he did not. He was asked if there was any public memorandum kept that would give the time? He said there was not. He was asked then, how did he know; had he any data to go by? He said he had not; but he said he knew the governor's calculations were correct. He was then asked if the governor, in his message, said I was only here five months in the two years or five months in each year? He said he could not state, but still persisted that he knew that the governor's statements in his message were right. These questions were put by myself and some of the committee three times,

and three times he gave the same answer. Mr. Kinkead beckoned to him; he then left the witness' stand and went to him. They whispered together; he returned to the stand, and the first thing he said was: I will ask Mr. Hardin if the governor's statement is not correct? The chairman of the committee instantly said: You have no right to put a question to Mr. Hardin. He then, for the first time, said he found a paper in the drawer of the table at which I sat, when in the secretary's office, in my handwriting, from which he and the governor, on the 1st of September, 1846, made the calculations as to the lost time; and by those calculations made his statements in his message. He was asked by one of the committee: was it a private or public paper? He said it was a statement made by me of the time I boarded at Colonel Davidson's; that some time before the 1st of September, 1846, he saw the paper in the table drawer, and when the governor, on the day he made the entry of my removal, asked him if he (Mr. Mitchell) had any note or memorandum showing my lost time, he said there was this account of mine in the table drawer, and at the request of the governor he got it out of the drawer, and from it they made a great part of their estimates; that the governor kept the paper until some time in September. I came to Frankfort and asked him to get all my private papers out of the secretary's office; that he went and got them; that upon looking them over I asked for this memorandum; that he went into the secretary's office and asked the governor for it. He handed it to him, and, at the request of the governor, he took a copy of it, gave the governor the copy to keep, and then brought me the original. That he did not get my permission to take a copy, nor did he tell me he had taken a copy; that the governor has the copy now. I believe upon that part of Mr. Mitchell's evidence, I have recited it about as he gave it in; however, if I am incorrect in any particular, the recollection of the committee will enable them to correct me. It is not my intention to misrepresent one word said by Mr. Mitchell.

"Mr. Chairman, the history of that paper is this: Colonel Davidson occupied the house he now lives in, as my tenant for near eighteen years, until July, 1844, when he purchased it. He had a lease for one year, which he kept, and no more; he took good care of the premises—made some repairs. He stayed after the first year upon the same terms, without any lease; he kept all the accounts; he paid money for the town tax, and charged me with it; he paid my own taxes to the sheriffs of Nelson, and also the taxes on some non-residents' lands that I was agent for, and gave me, at times, money. I kept no account, and knew nothing of the state of our moneyed matters; I trusted all to him; I have no doubt he did me justice; we never settled, and I expect we never will, as to the renting. I believe Colonel Davidson is one of the most upright persons I ever knew, and his heart is as near the right place as any person I ever saw, unless it be Mrs. Davidson, and, if possible, her heart is nearer right than his. When in Frankfort I generally stayed with

him; he was the owner of the house when I was made secretary. I told him I wanted him to fit up my office for me, and that I would board with him until Mrs. Hardin came to Frankfort to live. When I was first made secretary I stayed at the Weisigar House until my office was ready for me. I took possession of it and commenced boarding with Colonel Davidson about the 1st of December. I made no bargain with him as to the price I was to pay. I paid him from time to time, and he generally drew my salary as secretary and handed over to me what he said was coming to me. I know not now how our accounts stand.

"Last May I asked him how my boarding account stood. He said he did not know. I asked him the price of my board. He answered, and said he did not know that, but that we would fix it. He said he kept no account of the time I had been at his house since I was secretary. He then requested me to make some estimate, which I did, when I went to the secretary's office, with the intention of showing it to Colonel Davidson and Mrs. Davidson, to correct it, if there were any errors in it. The original will show it only to be a mere guess as to when I went first to board, and each time I left there, and when I returned. The first writing has no date, but the same pen and ink are used down to last May, which shows the first writing was done then. The next writing was done the 7th of August, as will appear by the same pen and ink being used in setting down the account from May till August. The paper will show conclusively, from the wording of it, that it was only a mere estimate, without any attempt at certainty. Upon looking it over, the date as to the time I came here last May is wrong by seven days, as will appear by commissions which I signed, and entries on the executive journal, and also by a letter I got on the 23d of May; I hold it now in my hand, and will exhibit it hereafter.

"How could Mr. Mitchell tell how much of my time I was here before I went to board at Colonel Davidson's, after my appointment as secretary? He was not here until near Christmas. Mr. Tilford acted for him. I have the original estimate now in my hand—if the committee want to see it, I will show it to them. Governor Owsley has what Mr. Mitchell calls a copy. Why does he not show it, that we may compare it with the original, and see whether it is a true copy or not? But the same men who could be base enough to look over a man's private papers, and take copies from them to base a false accusation against him upon, could take a false copy; and that, I have no doubt, is the reason why the copy is not produced.

"If I had not the original here, the copy would have been produced long ago, and sworn to by the 'duke.' That copy, if correct, will show that I was here four times between the end of the last session of the Legislature and the 1st of September, 1846, instead of three times, as Mr. Mitchell has testified. The copy, if a true one, will contradict his oath; and if not true, the original will contradict the copy. His grace is a cunning man of his

age, and the governor, his adviser, is a man skilled in adroitness and artifice. Mr. Mitchell went into a long dissertation to prove when a paper was private and when public, and so did William Anderson. Their reasons and ethics are the doctrines of the same person; and, when simplified, amount to this: that the table was public property, so was a private paper inside the drawer. That is about such reasoning as Withers, the landlord, near Lawrenceburg, some years ago employed. Young McKnight came from Louisville, on his way to Danville, with a large quantity of money, sent by the Bank of Kentucky to the branch at Danville. He came in a public stage, with the money; he put up at a public house, with the money; and as the stage and house were, to some extent, public, *ergo*, the money was public money, and he had a right to appropriate it to his own use. I care nothing, Mr. Chairman, about the paper. The manner in which his grace and the governor got it shows what kind of men I have to deal with.

"Since the days of Algernon Sidney, during the reign of that tyrant, Charles II., and the judicial despotism of that blood-thirsty monster and scoundrel, Lord Chief-Justice Jeffries, has any man's private papers, without his name to them, been taken from the place where he put them, as private property, and used as evidence against him, to degrade and disgrace him and his family, by a punishment worse than Sidney suffered, until it has fallen to my lot?

"Mr. Chairman, I admit, as I have before remarked, that I intended to bring my family here. When I formed that determination I had no white family but Mrs. Hardin and myself. About the 1st of May, 1845, the doctors, who attended on my daughter, informed her and her relations that she must die in a few months of the disease that then afflicted her. In that situation she desired to be brought to Bardstown, my residence, where she had been born and raised, that she might die there and be buried in the public graveyard, by the side of her brothers and the rest of my family. Her request was complied with. She was brought to my house the 1st of May, 1845, and her children, then six in number—one has since died, before its mother. She died the 5th of October, 1845. Her mother promised her to take care of and raise her children, which she has done.

"Rowan Hardin started to join the army in September, 1845; he left a wife and seven children, the eldest not nine years old. Mrs. Hardin has that family to take care of. She now has twelve grandchildren, and all but two under ten years. Thus situated, she could not move to Frankfort.

"Why I did not resign, and have not yet resigned my office of secretary of State, I will explain hereafter; that explanation will be more appropriate when I come to speak particularly of the manner Governor Owsley has administered this government.

"Mr. Chairman, I have reluctantly gone into this detail of my family afflictions, for it only awakens feelings of grief and sorrow, to show that I

did not act in bad faith when I said in my first letter to the governor that I would move to Frankfort. Those misfortunes, through the dispensations of an all-wise and just Providence, were brought upon me; over which I had no control, and to which I must, and do, bow with humble and dutiful submission: 'For the Lord giveth, and the Lord taketh away—and blessed be the name of the Lord.'

"Governor Owsley knew that I had abandoned the idea of moving my family here, when he became reconciled to me on the 3d of January, 1846, which reconciliation was based on the fact that I was to remain in office the constitutional time, if I chose; for nothing was said, or even intimated or hinted at, about my resigning, for if it had, I would not have made it up, but fought the battle out.

"We are now brought to the inquiry: Where was my residence since the presidential election? I had my office here; I boarded here, and was here about five months and a half each year. The residue of my time was spent at courts. Not more than eleven weeks, put all the times together, were spent at Bardstown; eight of those weeks were spent at the Nelson Circuit Courts. The other three weeks, as proved by Mr. Morton, that were spent at Bardstown, were only calls there, from time to time, when passing from court to court. Mrs. Hardin resided at Bardstown, taking care of her helpless grandchildren. I had broken up my office in Bardstown, and opened it in Frankfort.

"I have not attended any election in Bardstown since 1844. I have been at Frankfort at each election for 1845 and 1846. I did not vote here, because I was afraid that some person might indict me for voting out of my county, and put me to much trouble. I did not go to Nelson county to vote, because I did not consider myself entitled to vote there. These facts are substantially proved by Colonel Davidson. As to what Mr. Mitchell swears on that subject, I have no recollection of saying a word to him about it, and if I did, I know I never said what he has repeated. The question of actual residence, I admit, is not free from doubt and difficulty; but yet, if important in a constitutional point of view, I ought to have been heard before the governor decided it. But the governor, the 'duke,' and Mr. Kinkead could not wait.

"It is now my design, Mr. Chairman, to invite the attention of the committee to that part of the governor's message which reads in these words: 'So highly important was the subject in the estimation of the Legislature that, as far back as the 21st of December, 1795, an act was passed by that body ordering that the auditor, treasurer, and secretary shall reside at Frankfort.' The first question is: Is that act now in force? The next question is: Can a man be appointed secretary of State who lives out of Frankfort; and if he can, when does he forfeit the office by not moving into Frankfort? I shall contend that the law is not in force as to the secretary. He is an officer for

the State at large. He is secretary for the whole State — in its length and breadth, from Mill's Point to the mouth of Big Sandy, and from the Ohio river to the Virginia and Tennessee lines—and that the Constitution gives to him the right to live anywhere in the State.

"I will call the attention of the committee to the eleventh section, article six, of the Constitution of Kentucky, which reads in these words:

"'SECTION 11. All civil officers for the Commonwealth at large shall reside within the State, and all district, county, or town officers within their respective districts, counties, or towns (trustees of towns excepted), and shall keep their respective offices at such places therein, as may be required by law; and all militia officers shall reside within the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.'

"Whether the act of 1795, referred to by the governor, is in force or not will depend on the clause of the Constitution just read by me, and this clause of the Constitution relied on by the governor, which I will read. It is the first section of the schedule of the Constitution, and reads in these words:

"'SECTION 1. That the laws of this Commonwealth, in force at the time of making said alterations and amendments, and not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.'

"The Constitution was signed and published on the 17th day of August, 1799, to take effect on the last of June, 1800. If the law is inconsistent with the Constitution it is void. The act says the secretary shall live in Frankfort. The Constitution says he shall reside in the State. Permission to live in the State is expressly given, and it amounts to nothing more or less than this: Live where you please in the State; select your own residence. A law, then, that says his residence shall be in Frankfort is a restriction on the constitutional privilege of residence, and to that extent inconsistent with the Constitution and void; of that there can be no doubt.

"To simplify it to the common occurrence of life: I say to my son or servant, that during the approaching Christmas holidays you shall not go out of Frankfort during those days. Two days afterward, and before Christmas, I give him permission to go where he chooses, during those days of rest and festivity, provided he does not go out of Kentucky. Is not the last permission much more extensive than the first; would not my son or servant understand that the last permission gave him the liberty to go out of Frankfort without violating my order, provided he did not go out of the State? If you do not give to the Constitution the construction I contend for, then it has no meaning at all. If the act of 1795 is not inconsistent with the Constitution in the particular pointed out, then there is no force in our language, and words have lost their meaning and signification. The Constitution is paramount to any act of Assembly, whether the same was

passed before or after the formation of the Constitution. By the Constitution, a justice of the peace is to live in the county for which he is commissioned to keep the peace. There is no other or further constitutional restriction upon his residence than that. Two years ago the Legislature passed an act to allow an additional justice of the peace, to reside near Briggs' mill, on Caney. That bill the governor refused to approve and sign, because the bill restricted the residence of the justice, to be appointed, to a smaller space than Ohio county. The Legislature sustained the veto by an almost unanimous vote. The bill and veto read in these words:

"'*Gentlemen of the House of Representatives:*

"'Entertaining the opinion that the enrolled bill entitled: "An act to authorize the appointment of a justice of the peace in Whitley county, and for other purposes," which has been presented to me for my approval, contains a provision repugnant to the Constitution of this State, I return the same with my objections to the House of Representatives, in which it originated.

"'The fourth section of the bill is in the following words:

"'*Be it further enacted*, That there be allowed to the county of Ohio an additional justice of the peace, to reside at or near Briggs' mill, on Caney.

"'In thus requiring the justice to reside at or near Briggs' mill, I think the General Assembly transcended its constitutional limit, and invaded the power of the County Court of Ohio. The eighth section of the fourth article of the Constitution requires the county court, when a justice of the peace shall be needed in the county a majority, of all its justices concurring therein, to recommend to the governor two proper persons to fill the office, one of whom shall be appointed. Justices of the peace are county officers, and, according to another provision of the Constitution, must reside in the county for which they are appointed. It would, therefore, be a violation of the Constitution for the county court of any county to recommend persons not residents of their county as proper persons to fill the office of justice of the peace. But the power of recommendation, conferred by the Constitution, implies necessarily, I think, the right of the county court to select from the whole county two proper persons to fill the office. If this be not the fair construction of the Constitution, the power of recommendation may, by Legislative enactment, be cut down and reduced to an idle ceremony. For if it be competent to require, by law, the justice to reside in a particular neighborhood, upon the same principles, the justice may be required to reside in a particular house, and, therefore, nothing left to be done by the county court in its recommendation, but register the names of the persons directed by the Legislature.

"'WILLIAM OWSLEY.

"'JANUARY 20, 1845.

"'The said bill reads as follows, viz:

"'SECTION 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That Whitley county be allowed an additional justice of the peace, to be commissioned by the governor.

"'SEC. 2. *Be it further enacted*, That there be an additional constable allowed to said county of Whitley, to be located in the district of Henry D. Harman, a justice of the peace for said county.

"'SEC. 3. *Be it further enacted*, That there shall be appointed for the county of Harlan, one additional constable, who shall reside in the district of Abraham Slusher, a justice of the peace of said county.

"'SEC. 4. *Be it further enacted*, That there be allowed to the county of Ohio one additional justice of the peace, to reside at or near Briggs' mill, on Caney.'

"Now, I should be glad to know the difference why a bill, passed after the Constitution was made, would be unconstitutional, when a similar act, before it, would not be. If one bill is inconsistent with the Constitution, so is the other; and no man can see the difference but the governor alone. One is my case, the other a justice of the peace of Ohio county, and he vetoed the bill for the justice in Ohio county because he knew my case would occur. I may be under some delusion on this part of the subject, but it does seem to me that there can not be a plainer proposition presented to the mind of man, than that the act of 1795 is inconsistent with the Constitution made in 1799.

"There are two ways of repealing an ordinary act of the Legislature; one, by a subsequent law repealing a previous one in so many words; the other, by a subsequent act, that is incompatible or inconsistent with it. By the same rule, a subsequent will revokes a previous will, or a subsequent contract contradicting a previous one, abrogates it.

"The next branch of the question is: Suppose the governor is right (which is a hard thing to suppose), that the secretary must live in Frankfort or lose his commission of secretary of State, and that a residence out of Frankfort vacates his commission, then, is he qualified to receive the commission at all, living out of Frankfort? If he can not hold it and live out of Frankfort, he can not, in the first instance, be vested with the commission, because the law gives no time to move into Frankfort. The conclusion just stated would follow if the non-residence prevented him from holding the commission. But if the act of 1795 is still in force, it does not, it can not, in its consequences, *ipso facto*, vacate the commission. It is only directory on the secretary as part and parcel of his official duty; and if he does not perform it, what is the penalty? None is denounced by the act. Whether the Senate would consider it such a misdemeanor in office as to remove him on an impeachment, with all the other disabilities which would follow or not, has never been determined, and I think never will be, in the affirmative. Any man who is living in Kentucky, who is laboring under no disability, but of a local residence in Frankfort, can accept the commission and hold until removed. Even if the governor is right, that the statute of 1795 is in full force and virtue, whenever you arrive at the conclusion that a man who does not reside in Frankfort when appointed can receive the commission and be vested with the office, and can hold it until divested of it, either by impeachment or *scire facias*, as the governor can not try either, it follows, as a consequence, that he has no power to vacate the commission by any entry he

can make on the executive journal. There is but one way, in this country, and that is pointed out by the Constitution, which is, impeachment. To illustrate my meaning more clearly and distinctly, I will refer to the doctrine of deeds and descents. If the grantee has no power to take the estate granted, nothing passes by the deed or patent. If land is devised or willed to an alien, he can take and hold until an office of escheat is found, divesting him of the land and vesting the same in the government.

"An alien can not take by descent. If a man dies and has no heirs who have inheritable blood, the land passes instantly to the government, because it can not descend to the alien; and all that is required is an office of inquisition to inform the government, of record, that it owns the land.

"So with the office of secretary of State. If he can not take, for want of residence in Frankfort, then nothing passes; if he can take, then a judicial proceeding is necessary to divest him of it. A circuit judge has been decided by the Court of Appeals (in the case of Banks vs. Commonwealth, A. K. Marshall, 550), to be a judge for the State at large; and notwithstanding an act of Assembly, passed the 16th of January, 1817 (Morehead and Brown's Digest, Vol. I, page 375), requiring him to reside within his circuit, and if he does not, declares his office vacated; yet we know many of them do not, and have not resided within their circuits; and no person has ever presumed, for a moment, that the office of the judge was vacant. The reason was, that by the Constitution he was a judge of the whole State, and that no law could deprive him of his office by locating him in any circuit, or at any place; and the most that could be done by legislative enactment was to denounce a pecuniary penalty against him if he did not comply with the requirements of the law as to residence.

"To establish the proposition that a man can take the office of secretary of State, and hold it, and at the same time he takes and holds it, not be a resident of Frankfort, I will call your attention, Mr. Chairman, to the usages of this government from 1804, and which usages may be considered as establishing the doctrine, incontestibly, that I contend for.

"Elisha Macurdy proves that John Rowan was made secretary to Governor Greenup, in 1804, and resigned in 1807. Jeptha Dudley proves the same fact. Mr. Dudley also proves that Mr. Rowan moved to Bardstown in June, 1805, was elected to Congress from that district in 1806, and that he never, after he removed to Bardstown, in 1805, lived in Frankfort. Mr. Dudley also proves that Mr. Grayson was commissioned secretary for the residue of Governor Greenup's time, after the resignation of Mr. Rowan, and he never lived in Frankfort. Mr. Breckinridge was secretary to Governor Adair, and he never resided in Frankfort. Mr. Bledsoe was the secretary to Governor Scott, and he never resided in Frankfort. Mr. Barry was secretary to Governor Desha, and he never lived in Frankfort. George Robertson was the secretary first appointed by Governor Metcalfe, and he

never lived in Frankfort. Lewis Sanders was secretary to Governor Breathitt, and he never resided in Frankfort. Sanders, after the death of Governor Breathitt, continued a part of Mr. Morehead's time. When Governor Letcher appointed Mr. Harlan, the 1st of September, he resided in Harrodsburg, and moved to Frankfort the February following. When Governor Owsley appointed me secretary he knew I lived in Bardstown, which is a clear admission on his part that I was capable of receiving the appointment.

"I have, Mr Chairman, gone through the governor's four specifications, to-wit: that I would not speak to him. I have disproved that in point of fact. I have noticed the specification that, when here, I would not attend to my business as secretary. That I have proved not to be true. I have remarked upon the law and facts of the other two specifications, and have respectfully submitted my views to the committee. The governor says: 'With these facts before me, I entertained no doubt that the contingency had occurred—upon the happening of which the continuance of Mr. Hardin in office was made to depend—that there existed a forfeiture of his office, and that it was virtually abandoned and vacated. Accordingly, on the 1st of September last, I caused to be entered on the executive journal that the office was vacated, and thereupon commissioned George B. Kinkead, Esq., to fill the vacancy until the end of the present session of the General Assembly.'

"I have been, Mr. Chairman, at a loss to comprehend exactly what the governor means to assert by the part of his message which I have just read. Does he mean to say that the office of secretary was vacant, by abandonment, without his declaring it so; or does he intend to say that it was his judgment, based upon what he calls 'official delinquency;' or, what is called by my Lord Coke, non-user, that created the vacancy? I will first endeavor to show, and if I do not misunderstand the facts, conclusively prove, there was no official delinquency or non-user; and, secondly, there was no abandonment; and, thirdly, the governor had no right to enter up his judgment upon the case, declaring the office vacant.

"Mr. Chairman, if I can comprehend exactly what the governor intends by charging me with an abandonment of the office of secretary of State, I will reply to that by a flat, unqualified denial.

"The investigation of that question makes it necessary to inquire into the facts, and also the legal conclusions and consequences growing out of the facts.

"The governor says, in his message, that the office of secretary of State 'may, with propriety, be denominated a ministerial office.' I do not dispute the proposition that the office of secretary of State is entirely ministerial. All offices that are not legislative or judicial, must, of necessity, be exclusively ministerial or executive. Those two expressions are convertible terms,

and mean the same thing, when applied to every executive officer in the government but the governor himself, and he has legislative functions to perform in approving and signing laws.

"I will lay down another proposition of the law that is equally clear and indisputable, that all ministerial officers can act by deputy: such as sheriffs, constables, and clerks (see Bacon's Abridgement, title Offices and Officers, letter L). And in the same book and page, it is laid down, that a deputy has just as much official power as the principal. Holt, chief-justice, says, 'that a deputy can not regularly have less power than the principal.' The same principle is to be found in Salkeld's Reports, page 95. Whatever a ministerial officer can do officially, can be done by his deputy. Surely there can not be a shadow of doubt as to that principle of law.

"By the principles of the common law, I have a right to a deputy or assistant secretary. A statute passed the 24th of December, 1805, which authorizes the secretary of State to employ a deputy or assistant secretary; that assistant is now paid by the government. This statute was only cumulative, and does not in any manner effect or repeal the powers given by the common law to appoint a deputy; nor does it repeal or restrict his powers to act for and in his principal's name, although the governor supposes that the deputy or assistant can only do business in the name of the secretary when sick or necessarily absent. I think the governor has only made that supposition for my benefit, and for this especial occasion.

"The practice of all the secretaries of Kentucky has been different. Mr. Harlan says it was different with him—that the assistant signed his name, in many instances, when he was present. Mr. Mitchell has signed my name in a number of instances when I was sitting at an adjoining table. The governor can not forget that, when he wanted to treat me with neglect, and render me a cypher in the office, he would call Mr. Mitchell into his room; there they would hold a conversation and determine between themselves who should have an office. Mr. Mitchell would come into the room where I sat, get a blank, go to the governor's room, fill it up, the governor would sign it; Mr. Mitchell would then put my name to it in the governor's presence, then come back into the room where he and myself stayed, and put the seal to it, and enter the same on the executive journal, which would be the first intimation I would get of the appointment. These things were enacted nearly every day in my presence, without saying a word to me except indirectly and impliedly to say to me, 'You are of no account, and we do not want you here; you are in the way.' Lest the governor's recollection may not serve him, I would ask him if this was not done at the time he appointed Mr. Shanklin Commonwealth's Attorney, in place of George Thurman, resigned, and if it was not done the Saturday before the August election, in 1845? Get the commission, and you will see that it has my name written by Mr. Mitchell. To remind the governor, and Mr. Mitchell,

also, if they were here on the witness stand, I would ask them if they did not recollect the facts as I have stated them; and that when I saw the entry on the executive journal, that I went into the governor's room and said to him that John Shuck, of Lebanon, would have been a better appointment; and if to that remark the governor did not reply that Shanklin had been his warm friend in his election; and if I did not, in answer to that, state that if that was to influence his choice, so had John Shuck been.

"Has not Mr. Kinkead permitted Mr. Mitchell to sign his name to official papers, and that with the governor's knowledge, and when he was either present, or not sick, or absent on necessary business? To prove that fact, I have read to you, gentlemen of the committee, a pardon for a convict in the penitentiary, executed by the governor and Mr. Mitchell for Mr. Kinkead; and that the pardon was thus executed, Mr. Kinkead admitted. By virtue of that pardon, the keeper released the convict. I will further state, that Austin P. Cox acted as the assistant of Governor Owsley when he was secretary to Governor Morehead, and that Mr. Cox was in the daily habit of signing Governor Owsley's name as secretary to all official papers in the presence of the governor. Mr. Cox is now in town; he is unable to get here. I will, before this case ends, prove the fact by his certificate.

"Mr. Chairman, you have already been informed that I had an assistant secretary; a person well qualified, and selected by the governor; that he lived in Frankfort, and that the secretary's office was kept on the Capitol Square, and that, except when the Legislature was in session, and when the volunteers were offering their services and the governor was accepting companies and signing commissions to the officers, there was no press of business in the office, and that the whole of the ordinary business of the office did not take more than one hour's work a day, on an average; and when the governor attempted to remove me, there was no business to do in the office, nor had there been any for two days. That myself, or deputy, was never absent; always here, claiming the office of secretary of State, and doing the business of the office. I gave the assistant secretary all the fees of office, as a compensation for my occasional absence. I will ask the governor at what time was it when the office was abandoned? If, at times, I was not there, was not my deputy there? If a clerk or sheriff is absent from his office a week, or a month, or two months, and, during the times of his absence, has well-qualified deputies doing the business in the name of the principal, is that an abandonment of his office? An abandonment of office depends upon the intention of the officer—the *quo animo* with which he leaves the office.

"If I should go to Texas to look at the country, or Oregon, with the intention to return, and do return, although I may be gone for one, two, or three years, I do not lose my citizenship in Kentucky.

"Upon this same principle did Congress and the government of the United States claim Richard Mead of Spain, and demand his release from prison. Mead had been in Spain a number of years before he was in prison. He went to trade and speculate, and did not intend to expatriate himself; and hence the government of the United States demanded him, and he was released by the government of Spain.

"This same principle is recognized by the Senate in the contested election of Williams and Mason, where men were allowed to vote who had been in Texas for years looking at the country, but intended to return, and did return. They voted before they had been back one year. So the question came fairly before the Senate.

"The same principle was admitted by the House of Representatives in Congress in the contested election of Moore and Letcher; and the same principle is fully established in all admiralty cases in Great Britain and the United States.

"Now, Mr. Chairman, test the facts by the rule laid down as to abandonment, which is incontestibly correct. I ask you, when did I abandon the office of secretary of State? The governor says I was absent at different times during the year 1845. Was I not here during the last session of the Legislature, doing the business for three months together, without the loss of one day. I was absent from the 24th of February, 1846, until about the 10th of April, 1846. Did I not return and do the business then, until the fourth Monday in April, 1846; and, although I left and returned at different times during the spring and summer, did I not, at each time I returned, claim the office and do the business myself? When I returned the last time, about the 24th of July, and stayed until the 7th of August, 1846, did I not, during that time, claim the office and do the business of it in the same room with the governor? I did; and with his consent and approbation; which proves, up to that time, I had not abandoned the office, but was in office, and so admitted by the governor.

"I was gone the last time from the 7th of August to the 1st of September, 1846, hunting a runaway negro, who had, according to the opinions of the doctors who attended the negro he had stabbed, committed, in all probability, murder; and during all that time I had a deputy in the office doing the business in my name, with the consent of the governor, and, besides his salary, getting the fees of the office as extra pay from me. Was that absence of three weeks and four days an abandonment? Because the other times of absence can not be added to that; for, at the end of each previous absence I had returned, claimed the office—my claim was admitted by the governor—and I did the business of the office.

"I ask you, Mr. Chairman, and the honorable committee, to respond to this question—and I demand of the governor an answer—was not my claim and right to that office admitted? And did I not, by my deputy, do the

business of the office on the 1st of September, 1846, when my name, on that day, was, by the deputy, signed, in the presence of Mr. Kinkead and the governor, to sixty patents? Does not the order appointing Mr. Mitchell the assistant of Mr. Kinkead admit he was my deputy up to that moment, by using the words 'appointed and continued?' Continued how? Why, as my deputy, if Mr. Kinkead's appointment was not legal. Mr. Mitchell swears to that fact; that it was so worded at his instance, and with that intention. The governor read the order, thus worded, and approved of it, as by law he was bound to do; and so it is stated in the face of the order; to meet the contingency that if the Senate should decide that the governor had no right to remove me, then I had no right to remove him, although at that time I had made no attempt to remove him, nor did he or the governor know I would make any such attempt. Their object was to continue him in office, at all events; because the 'duke' must have his salary, as part of his means to support his new dignity. That puts me in mind of an anecdote that occurred some few years ago at Bardstown: Mr. Turner Wilson, a neighbor of mine—one that gambled sometimes, and had caught a few of the cant phrases of the craft—a man of fine sense and wealthy—was taken very sick, and about to die. Rowan Hardin, who was extremely fond of him, started from Bardstown one day to go to Mr. Wilson's residence, to see him. On the road he met a Methodist preacher. He asked him where he had been. He said he had been to see Turner Wilson; that Mr. Wilson was about to die, and had sent for him. Then they parted; the Methodist preacher came on to town; Rowan Hardin continued on to the house of Mr. Wilson. When he got there he found him just at the point of death, and a Catholic priest with him. When the priest left, Rowan remarked to Mr. Wilson, 'What does this mean, Turner? I met a Methodist preacher on my way here, and he said you had sent for him; and when I came here, I found a Catholic priest.' Mr. Wilson replied: 'Oh, Lord! Rowan, I am almost dead—I want to take all the chances!' So with Mr. Mitchell and the governor—their case is so very bad that they want to take all the chances!

"Mr. Mitchell drew his quarter salary from the 1st of July to the 1st of October. Two months of that time was before the appointment of Mr. Kinkead. Then, that two months was his salary as my deputy. These facts were all known to the governor when he sent in his nomination of Mr. Kinkead, accompanied with his message and declaration of war against me, also his manifesto setting out his reasons for the war.

"Mr. Mitchell says the governor advised him not to put my name to the patents. That advice was only colorable to save appearances. Like a justice of the peace who loves to see a fist fight between two men, he will in a loud voice command the peace, and in an undertone, at the same time, say, stand back, boys, fair play!

"Mr. Chairman, you recollect the account Mr. Macurdy gave of the sixty patents; that the governor had been absent at his farm in Boyle county for about ten days during the latter part of August; that owing to that fact, the unsigned patents in the register's office had accumulated to sixty; he had dated them according to the days the grantees were entitled to them, and that they had all been recorded; that all of them bore date before the 1st of September, 1846; that when he heard that the governor had removed me and appointed Mr. Kinkead secretary of State, he took the patents into the governor's room to be signed; that the governor looked at them, and asked him if he could not alter the dates; he replied he could not, because they were due at the time they bore date, and because they had been recorded; that the governor, Kinkead, and Mitchell were all in the room; it was then concluded that Mr. Kinkead could not attest them, as the patents bore date before his appointment; that when he left the room, the governor, Mr. Kinkead, and Mr. Mitchell were consulting about putting my name to them as secretary, by Abram S. Mitchell, my assistant. It was determined, before Macurdy left the room, that Kinkead should not attest them. They all three knew that they must be attested either by Mr. Kinkead or myself. They had decided, before Macurdy left the room, that Kinkead could not do it. What then must be done? Nothing but this. That I was to do it. Did not the governor know that Mr. Mitchell was putting my name? Did they (to-wit: the governor and Mitchell) not sit within three feet of each other, and when the governor put his name to a patent, it was laid before Mr. Mitchell, and he instantly put my name? The governor knew the attestation was then being done. He saw Mr. Kinkead was not doing it. The conclusion is inevitable, that he knew my deputy was doing it in my name. The governor's advice to Mitchell was only colorable, a sham and trick, to save appearances. If the advice had been given in good faith, Mitchell never would have put my name. The governor had, the same day, just before, entered on the executive journal, that I had abandoned the office. He had appointed and commissioned George B. Kinkead. The putting my name afterward to the patents was placing him in an awkward position. The advice, not to put my name, was a trick and artifice, not intended to be obeyed, to give color to the transaction, that he might escape the position, that he should first proclaim me out of office, and so cause it to be entered on the executive journal, and appoint my successor, and then, an hour or two afterward, cause my name to be signed to sixty patents. It was a disingenuous contrivance to save appearances, entirely beneath the dignity of a governor of Kentucky.

"Mr. Chairman, the governor seems to confound the technical terms, as given by Lord Coke, to be found in Bacon's Abridgement, title Office and Officers, letter M. 'There are,' says my Lord Coke, 'three causes of forfeiture, first, by abuser; secondly, non-user; thirdly, refuser.' Non-user

means a neglect of duty as an officer. There is no such term as abandonment. It is non-user, or neglect of duty. There is refusal to accept. None is alleged, because the fact is the reverse. But, after acceptance, the legal terms are non-user and abuser. One means non-feasance, the other mis-feasance. There is no pretense of mis-feasance on my part.

"After an acceptance of an office, if the officer neglects his duty, or does it wrong, he is guilty of misdemeanor in office. How is he to be punished for that, besides the actions against him by each individual who may be injured, either because he won't do his duty as an officer or does it wrong? In Great Britain, his office is to be taken from him by *scire facias*, provided he holds his office by letters patent, which is a commission under seal. (See 5th volume of Bacon, page 212.) The words of the law are these: 'Whenever an officer, who holds his office by patent, commits a forfeiture, he can not regularly be turned out without a *scire facias*, nor can he be completely ousted or discharged without a writ of discharge; for his right appearing of record the same must be defeated by matter of as high a nature.' Jacob's Law Dictionary, volume IV, page 440, has the same law.

"The patent in Great Britain is only repealed by a *scire facias*, as the law says in so many words. In a court of chancery, where the parties are notified, and have a full and fair trial, and if the officer's commission is taken from him, it is done by a judgment of the court, after every opportunity is afforded him to be heard in his defense.

"In this country, how is non-user and abuser to be tried? By an impeachment before the Senate. Sections 2 and 3, article 5, of the Constitution, reads in these words:

"'SECTION 2. All impeachments shall be tried by the Senate; when sitting for that purpose, the senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

"'SEC. 3. The governor and all civil officers shall be liable to impeachment for misdemeanor in office; but judgment, in such cases, shall not extend further than removal from office, and disqualification to hold an office of honor, trust, or profit under this Commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment according to law.'

"Also see the case of Bartlett against the Franklin County Court, Sneed's Reports, pages 215, 216, and 217. The case reads in these words:

"'OCTOBER 27, 1802.

"'Harry Bartlett,
"'*vs.*
"'The Justices of the County Court of Franklin,
} Upon a Mandamus.

"'In January, 1796, Bartlett was commissioned and qualified as a magistrate of the county of Franklin; but failed (and, it was alleged, from an unsound or deranged mind) to sit as a magistrate for several years, during which time, the Constitution being changed so as to require the two eldest magistrates of the county to be recommended by the county court to the

governor, for him to appoint one of them sheriff. Bartlett being the eldest magistrate, and wishing to fill the office of sheriff, in May, 1802, offered to take his seat as magistrate, but was refused that privilege by the county court, who caused an order to be entered up, saying that he "shall not be admitted to a seat as one of that body." An application was then made to the Court of Appeals, at their April term, 1802, for a *mandamus ni si*, against the said county court, which was granted, and on which the county court made the following return:

"'*Franklin County, Sct., County Court, September term*, 1802.

"'This court, having seen and considered a writ of mandamus awarded by the Court of Appeals, and to this court directed, to show cause why Harry Bartlett, who was formerly appointed a justice of the peace for the county aforesaid, shall not be permitted to take a seat as justice of the court for the said county, in obedience to the writ aforesaid, hereby return for cause:

"'*First:* That it appears to this court, of record, bearing date June term, 1797, duly entered in the said county court, and remaining unrevoked, that the said Harry Bartlett was then taken, deemed, and held to be a man of unsound mind, and trustees were appointed to take upon themselves the care and management of the estate of the said Bartlett.

"'*Second:* That from the said June term, 1797, until the May term, 1802, of this court, the said Harry Bartlett had absented himself from this court, and had not, during the period aforesaid, either by himself or any other, attempted to take a seat in this court—and

"'*Third:* This court thinks it both illegal and reproachful, that the said Harry Bartlett, who appears to them to be incapable of doing any legal act in his own business, should participate in the judicial administration of the law of the land.

"'Ordered, that the foregoing return to the mandamus aforesaid, be certified to the Court of Appeals.

"'*A Copy—Teste*, DANIEL WEISIGER, C. F. C.'

"At the October term of the Court of Appeals ensuing, the parties were heard by their counsel, and the court took time to consider thereon; and on the 27th of October, 1802, delivered in their opinion as follows:

"'The causes assigned by the justices in their return, for not admitting Harry Bartlett, the applicant, to a seat on the bench of the county court, as a member of the said court, appear to be insufficient and unsatisfactory, for the following reasons:

"'*First:* It does not appear that the legal steps were pursued in 1797, when the applicant was declared to be of unsound mind, and his estate committed to the care and management of trustees. But, if the legal steps had been pursued, and the applicant regularly pronounced a lunatic by a competent jurisdiction, yet, as lunacy is often a malady of short duration, the sufferers under it frequently restored to the full enjoyment of their mental faculties, it should have appeared (to justify the rejection of the applicant from his seat altogether) that he not only was in the year 1797, but still continues to be of unsound mind, and incapacitated to discharge the duties of the office.

"'*Second:* In answer to the second cause assigned, it will be sufficient to say, that the law has not limited, in the case of county court justices,

what length of absence from duty shall produce a forfeiture of the office; and, therefore, if the applicant has been guilty of such neglect of duty as will subject him to removal from office by any of the modes pointed out in the Constitution, such mode as may be conceived applicable to the case should only be resorted to.

"'The third cause assigned contains nothing but the opinion of the justices, and, therefore, requires no answer.

"'Wherefore, it is considered by the Court that a peremptory mandamus be awarded the plaintiff.'

"What is the doctrine now contended for by Governor Owsley and his friends? That instead of a *scire facias*, as in Great Britain, or impeachment, as directed in our Constitution, for a misdemeanor in office, the governor and Mr. Mitchell will give the neglect of duty (to-wit: non-user), a strange and unheard-of name—call it abandonment. That name has such a magical influence in it as to authorize them to dispense with notice or trial—have a star chamber inquest, not of justice, but injustice, over me—break me before I ever heard of it. Then, to bolster up such an enormous act of injustice and oppression, to basely take my private papers out of a table drawer, where I had put them, to draw up a kind of accusation or indictment against me, to be laid before the Senate.

"According to the mythology of the ancient Grecians, Jupiter put over the dead a judge in hell, called Radamanthus. He was so cruel, and delighted so much in the torments of the souls of the dead, that he punished first, with great severity, and heard the cause afterward. Jupiter said that was not his way to do business and administer justice, became displeased with his conduct, took his commission from him, on account of his injustice, cruelty, and barbarity. I have never heard of but two cases on this earth that had any resemblance to the manner of Radamanthus' administering justice. One was a country school-master, who taught in Nelson county, and to whom Albert G. Botts, now a worthy representative from that county, went to school when a boy. The school-master, according to Mr. Botts' account, whipped first and heard the cause afterward; and if, on the trial, he acquitted the poor scholar, he entered, in a memorandum book kept for that purpose, a credit for a whipping hastily and unjustly inflicted. On the next offense given by the scholar, he gave him a credit for the balance on his book in his favor; squared his books, and so the matter ended. The other case that I had reference to on this earth, was that of Governor Owsley. He imagines I have, as secretary, been guilty of an offense; calls it by a new name, 'abandonment;' punishes me first, without notice or trial, and, after the punishment is inflicted, hears my cause.

"Mr. Chairman, no man is safe if this new doctrine of the governor's, called abandonment, is recognized and established. Is there any time fixed as the duration of absence? None. Is there any kind of excuse for the absence defined? None. It is all to be at his discretion. For a friend

like the attorney-general, may be gone to the city of Washington, for two months, pleading causes in the Supreme Court. The governor will construe it no abandonment. A commonwealth's attorney may be in the army twelve months, with a commission in his pocket, signed by the governor. That is no abandonment, because his father is a man of great wealth, an eminent lawyer, and the governor's friend. But if he wants to reclaim my office, and bestow it on a friend, he will construe three weeks and four days absence an abandonment, and take the office away, although the absence may be and was on the most urgent business. The governor's prejudices can always construe the absence of an officer he does not like into an abandonment. Or, if there is an office that a pet wants, he can shorten the time from three weeks and four days to two weeks—nay, one week; and, according to his doctrine and that advocated by his friends, the Senate nor any other person can dispute or question the legality of his acts.

"The governor says abandonment creates a vacancy, and he is the sole judge of that. I will ask, Mr. Chairman, what judge, what ministerial officer, is safe to adopt that doctrine? The judges of courts will so adopt the same rule of proceeding, when they want to vacate a clerkship, to put one of their brothers or sons into office; because, what was usurpation to-day, is precedent to-morrow—an established doctrine the next day. This doctrine of abandonment is new, extraordinary, and startling. Establish it, and all power concentrates, ultimately, in the governor; and then the governor and his Grace, the 'duke,' can well say, as Alexander Selkirk said when on the island of Juan Fernandez, 'We are monarchs of all we survey.'

"The people must resist usurpation and oppression at their first appearance. It will not do to become familiar with them. They first make their appearance in a disguised dress, and like a man attempting to break a horse, he speaks kindly at first—strokes the horse's neck—pats him on the back; but let him once get the bridle in his mouth and the saddle on his back, and he in that, then the poor horse is a slave for life, and doomed to a life of hard labor, great drudgery, and cruel treatment. So with the people and a tyrant, as the melancholy history of the world, from Nimrod to the present day, proves. There is no way to live and die free, but to be watchful and jealous of our liberties.

"What was the conduct of the people of Great Britain when Charles I. attempted to collect ship-money, without an act of Parliament? They resisted and made war upon him—finally dethroned him, and beheaded him. Mr. Chairman, we ought, as free men, never forget what John Hampden said on that occasion. When one of the ministers of the king said: 'Mr. Hampden, why do you resist your king for twenty shillings?'—that was the amount of his tax—he replied: 'I care nothing about the twenty shillings; it is not for that I oppose myself to the power of the Crown. I fight for my liberty. To tax me even twenty shillings, without my consent, makes me a slave.'

"The same people made the same kind of resistance to James II., when he attempted to interfere with the Protestant religion of the people. The consequence was, that James had to abdicate his throne and fly from his kingdom. Louis XVI., of France, paid the forfeit of his head for invading the rights of the people; and his brother, Charles X., had to leave his kingdom for the same conduct toward his people.

"Our fathers resisted, and maintained with their lives, their fortunes and their sacred honors, that resistance to the claim of Great Britain to tax them without their consent, as they had no representation in the Parliament of Great Britain. They would not submit to a small duty on tea. The ministers of Great Britain had sugared the pill by giving a drawback, or bounty, to the exporting merchants, which enabled them to sell to the colonists the tea cheaper than before. The disguise was seen through. It was not for the amount of the duty they took up arms, but their liberty. For a man is a slave if he submits to be taxed without his consent.

"It is my case, gentlemen, to-day, it may be yours to-morrow, and it may be the judges of our courts the next day. Their independence may be sapped, and they may be rendered the mere tools and creatures of the governor, like they were in Great Britain the instruments of oppression to the people, instead of their guardians and protectors, before they were rendered independent of the king. For, when they hold their offices during the good pleasure of the governor, under this new device of abandonment, their offices depend upon his will and pleasure, as he can construe what he pleases into an abandonment, and then his word is not to be disputed. When they are thus dependent on him for the tenure of their office, they are dependent on him for the bread they and their families eat. Instead of being free and independent men, they will become slaves. All tyrants find new names for old things, and under those names oppress the people and rule them with a rod of iron.

"Mr. Chairman, before I finally leave this subject of neglect of duty in an officer, I will refer to a part of the Constitution. It is section fourteen, under the head of General Provisions, and which expressly provides for an occasional absence of an officer by authorizing a deduction from his salary. That goes to disprove this whole doctrine of abandonment of office. It goes upon the supposition that the officer still continues in office until removed by impeachment. The part of the Constitution I have reference to reads in these words.

"'SECTION 14. It shall be the duty of the General Assembly to regulate by law, in what cases, and what deduction from the salaries of public officers shall be made, for neglect of duty in their official capacity.'

"Mr. Chairman, the governor seems to forget a universal rule in all wars between man and man, and nation and nation. After a treaty between nations, they never go behind the treaty to look out for a new cause of quar-

rel; so with individuals, if they fall out and make it up, become reconciled, and afterward, one chooses to fall out with the other, he has no right to go back behind the time they settled their disputes, difficulties, and quarrels. The governor, in his message, did not even regard this rule, for nearly all his causes of complaint existed, if they existed at all (which I deny), before our compromise and reconciliation, the 3d of January, 1846. That is a further confirmation of what I have said—that he is a hard man to please; like a child, you can not keep him in a good humor.

"The governor, in his message, says: 'Suppose that after Mr. Hardin had accepted the office he had refused to qualify to it.' As the case supposed by the governor did not occur, I am under no obligation to answer his supposed or imaginary cases, because I did qualify and acted under the commission. The governor seems to confound terms again, like he did in using the word 'abandonment' for non-user. It is the qualification that completes the acceptance; and without the qualification, the appointee is not fully invested with the office by the commission. He has a right to it, provided he accepts it; that acceptance is the qualification, and without the acceptance, the vacancy, to fill which the appointee was commissioned, has not been filled; and it is just the original vacancy at last. If I make a man a deed to a tract of land, and he will not accept it, nothing passes out of me by the deed. If the governor makes a deed to a man, called a commission, conveying a franchise or office, and he will not accept it, nothing passes. It takes the assent of grantor and grantee to pass the title by deed. It is, certainly, not worth while to waste a word more on that supposed case of the governor, who, in his charges against me, has drawn so liberally on his imagination for his facts.

"The governor says, has he not a right to judge and decide on a vacancy? Certainly he has. So has the Senate and so have the courts, when the question comes fairly before them. But that proves nothing in this case. The governor again confounds an actual vacancy with the great constitutional question of his right to create a vacancy; for the real or supposed delinquency of the officer, the identical thing to be tried by an impeachment. A vacancy may occur in various ways. By the creation of an office; before it is filled it is a vacancy to be filled, and of which the governor is, in the first instance, to judge. The act of God, by the death of an officer, creates a vacancy. The officer himself can create a vacancy, constitutionally, three ways, and still be guilty of no offense. One, by resignation; a second way, by removal out of the State; for when that event occurs, the Constitution creates a vacancy. The third way, by the acceptance of an incompatible office—that is a resignation by the Constitution, because he can hold but one office if they are incompatible; and by the acceptance of the last office, he has declared his election to hold that. That election amounts to a resignation of the first office he held. Such is the common law in so

many words, and such is our statute on that subject. The common law reads in these words: 'A coroner made sheriff, ceases to be coroner; so a parson made a bishop; a judge of C. B. made a judge of B. R.' * * * 'It was holden, that the acceptance of the office of town clerk, though an inferior office, vacated that of jurat.' Our statute on that subject passed 21st of December, 1799, to be found in Morehead & Brown's digest, volume II, page 1251, and which reads in these words: 'Section 13. When any person in office, as representative, senator, sheriff, coroner, or any other, shall accept any new office or appointment, which by the Constitution shall be incompatible with the former office, such former office shall be vacated.'

"These ways of creating a vacancy do not come within the constitutional provision of creating a vacancy by the judgment of the Senate, on an impeachment; because it is no offense to resign in any of the three ways I have pointed out. It is no offense to remove out of the State. It is no offense to resign. It is no offense to accept an incompatible office, consequently there is nothing to try by an impeachment, if the vacancy happens in any of these ways. But if the officer has been guilty of a misdemeanor in office, it is the offense that renders the office forfeitable; and the judgment of the Senate, when applied to the offense, that actually forfeits it. That is the high judicial judgment that the governor now wants to render without a trial, although the Constitution declares the officer shall have a trial and be confronted with the witnesses face to face. A fair and public trial comports with the genius of our government. Secret star chamber trials are the rules of action at the palace with the governor and with the 'duke.'

"That the rule of action at the palace is secret and unknown to the accused is evident and manifest, for I had no notice that the governor did undertake, in the first instance, to adjudicate my case. I refer to that part of his message which reads in these words: 'In so acting, it is true, I exercised my judgment in the official delinquency of Mr. Hardin.' These words, just quoted, prove conclusively that the governor considered he was adjudicating on my case.

"In another part of the message of the governor, it reads in these words: 'Nor could he, if the peace of the community was disturbed and the lives of the citizens endangered by an insurrection or rebellion of the most aggravated character, have attested and legally authenticated any order which it might be his duty to issue for their suppression.' I might give a full answer to that part of the message by saying I am not bound to reply to a supposed case, nor am I responsible for a case that never happened. Have there been any rebellions or insurrections? None. Then why this pitiful and miserable cant about rebellions and insurrections? The answer is obvious; just to play the demagogue, to furnish him with a pretext to extend his incidental powers as governor.

"In the days of ancient Rome, after Julius Cæsar was assassinated, Mark Anthony got hold of his papers, would forge wills and scraps of wills, and go out through Rome, read those forgeries as genuine, show Cæsar's dead body, and the mantle he had on when killed, and attempt to cry, and actually seem to weep, like the crocodile, for the sole purpose of grasping the power and government of the Roman commonwealth. When, by these tricks, he got the power into his hands, he would not scruple to proscribe and put to death three or four thousand of the best and noblest citizens at a time. I understand the hypocritical cant and whining of a demagogue, whether it be Cleon of Athens, Mark Anthony of Rome, O'Connell of Ireland, and then, to compare small things with great, Judge Owsley, Governor of Kentucky.

"Upon that point I have shown to you, gentlemen of the committee, I had a deputy, and that he or myself was always in place; that by the common law and our statute I had a right to have a deputy; that it was the man the governor selected for my deputy; and that he had a right to sign my name, whether I was absent or present; that such had been the custom and practice of all the governors and secretaries, including Judge Owsley himself.

"The message of the governor has these words: 'Though convinced by the most reliable evidence, discovered after trial, that a condemned culprit was innocent of the crime of which he was convicted, the governor would be unable, in the absence of the secretary, to rescue him from death and the gallows, by a pardon legally authenticated.' I have the same answer to make to that part of the message that I made to his supposed rebellions and insurrections. Nothing of the kind has occurred. Did not the governor send to the keeper of the penitentiary a pardon, signed by himself and attested by Mr. Mitchell for Mr. Kinkead, the 28th of last November, and was not the man released from the penitentiary on that pardon? I have read you the pardon, gentlemen; I got it from the clerk of the penitentiary. The governor's practice and his demagogueism are at war with each other. However, if I may indulge in suppositions, I suppose the governor alludes to the case of Dr. Baker. But the governor says an 'innocent culprit.' What a solecism in language. The governor seems not to understand the meaning and force of words, and hence the difficulty of comprehending, from his message, exactly what he does mean and intend, which has greatly embarrassed me in knowing how to state his positions, and what is the extent of the powers he claims.

"There are three things plainly discoverable from the message—that he hates me, and wants to turn me out of the office of secretary, and put in George B. Kinkead; but exactly for what, no man can precisely tell. It is as mysterious a piece of jargon as the responses of the priests and priestesses of the Ancient Oracles, when consulted by Crœsus on the result of his approaching war with Cyrus, the king of the Medes and Persians.

"The message, again, has the words: 'Besides, the tenure of the office of secretary, as prescribed in the Constitution, is peculiar; he is not to have and to hold the office absolutely and unconditionally, for and during the term for which the governor is elected, but he is to hold the office for the term, if he shall so long behave himself well.' There is no man in this country holds an office, whether for life or for years, by any other tenure than good behavior. I do not exactly comprehend what the governor means by the word 'peculiar.' Does he intend that the words, 'behave himself well,' have a different signification than good behavior; and that the words, 'so long as he behaves well,' puts the secretary within the power and at the mercy of the governor, and that he can turn him out whenever he is of opinion the secretary does not behave well? Such a conclusion does not follow, for the words, 'good behavior' and 'behave well,' mean identically the same thing. I ask, Mr. Chairman, if the great constitutional right of a man to a fair and open trial, accused, accuser, and witnesses all face to face, is to be taken away from him upon such a ridiculous play on words? 'Behave well' and 'good behavior.' 'Good behavior' gives the constitutional right to a fair trial; 'behave well' takes it away. What a very Daniel of a man—most wise Daniel.

"The Constitution somewhat resembles the Old and New Testaments. They were intended by our Creator to save everybody if followed; and they are so plain and intelligible as to be suited to the capacities of the people. So is the Constitution; it is made for all, and in its style and language adapted to the understanding of all. No refined meanings are to be adopted in construing either. The Scriptures and Constitution are not alone made for such learned men as your Horne Took, the governor, and his Grace, the Duke of Buckingham. The governor is indebted to his Grace, I have no doubt, for that learned distinction between good behavior and behave well. What a dissector of words; how profoundly and prodigiously learned the governor is getting in old age, especially when he wants to take from me the office of secretary and give it to Mr. Kinkead.

"In Jacob's Law Dictionary, volume III, page 546, you will see these words: 'In order to maintain both the dignity and independence of the judges of the Superior Courts, it is enacted by the statute 13 William III., chapter 2, that their commissions shall be made, not as formerly, *durente bene placito*, but *quamdieu se bene gesserint*, and their salaries ascertained and established, but that it may be lawful to remove them on the address of both Houses of Parliament.' *Durente bene placito* means, during the pleasure of the king. *Quamdieu se bene gesserint*, so long as they shall behave themselves well; which are the precise words in the tenure of the office of secretary. The Constitution, when speaking of the tenure of office, speaking of one officer in the singular, as secretary or sheriff, uses the words, 'so long as he shall behave well;' and when speaking of more officers than one, uses the

words, 'good behavior.' I refer you to the Constitution, in different parts, to prove that position. The governor, himself, uses the words as synonymous; he says, in my commission, 'so long as he shall be of good behavior.'

"Mr. Chairman, the governor, when speaking of my conduct as secretary, after enumerating a number of frivolous complaints against me, says, that 'it is nothing more or less than an effort to obtain the emoluments of an office, the duties of which he would not perform.' I have already stated to you, gentlemen, as near as I could, about what portion of my time I was in Frankfort, the courts I abandoned my practice in entirely or partially, the sacrifices I made in my professional business. Did not Governor Owsley know, and did he not agree, that I was to continue my practice as a lawyer when secretary? Did he not continue his practice as a lawyer when secretary? Did I lose any time at the seat of government except when I was at court? The governor does not believe it himself. Then why insinuate that I held the office to draw the salary without rendering any equivalent for it in services? I can make more in two months, out of my profession, than the salary amounts to in a year.

"I took it in good faith and in the integrity of my heart, to assist the governor in his administration; but, shortly after I took it, I discovered that the governor and his minions wanted to drive me out of it by ill treatment. After that, I only continued in the office to select a fit time when I could leave it and seem to do it of my own accord. I had rather than five thousand dollars I never had accepted the office; it would have saved me many a bitter pang. I will refer to the lawyers who have practiced with me, for thirty years, if they know any man in Kentucky, who, as a lawyer, takes as moderate fees as I do for the professional skill and labor bestowed; and in my whole life, private and professional, if they know of any man living less of a screw-driver.

"The governor has heard, I have no doubt, that when Jeremiah Boyle, who married his granddaughter, got unfortunately into some difficulties with a gentleman by the name of Greenwood, in Danville, and killed him, that I was twice sent for, once to Bardstown and once to Springfield, and a fee of five hundred dollars offered me to prosecute him; that I refused, and each time gave the same answer, that I would not, in such a case, prosecute a son of one of the old judges of the Court of Appeals, and who had married the granddaughter of another, for any sum whatever. I will ask the governor if it seemed like avarice, when I quit all my business, private and professional, for nine months, and rode over fifty counties to canvass for his election, and nearly all the time at my own expense? If that be avarice, it is a kind of avarice the governor never knew or felt.

"Before the governor maliciously insinuates that charge, he had better look a little to his own moneyed matters. During the struggle and contest between the old court and new, the old court was prevented from doing

business, as a court, for nearly eighteen months; nevertheless, they drew their pay, amounting to about twenty-two hundred and fifty dollars each. Governor Owsley cashed his salary to a certainty, and yet he rendered no service. The governor had better look a little to the enormous sums of public money he has expended for his own convenience, upon the palace, and for his family, without being immediately connected with the improvements of the palace, right in the teeth of the Constitution, as no appropriation for a large part of those disbursements was made by law.*

"Mr. Chairman, I have intimated that I intended to give some account of the administration of Governor Owsley, so far, at least, as I have been concerned with it, to show the true position I occupied in that administration.

"When Governor Owsley was elected governor, my heart was filled with joy and gladness. I concluded that if it met his views, I would act as his secretary, and move to Frankfort, for the sole and only purpose of aiding and assisting him in managing the executive department of the government. Money was not my object. I knew I was making great pecuniary sacrifices, and leaving one of the most comfortable and handsome residences in Kentucky. My object was to make fame for him and myself both, by the manner in which we would conjointly carry on the government. After the presidential election, in 1844, I was here for several weeks. Mr. Mitchell was not here. Mr. Tilford acted for him, as my assistant. All was harmony between the governor and myself. We, in a few days, settled down upon several general principles in conducting the government; one was, never to pardon a man when there was nothing alleged for his pardon than this, that the court and jury had erred in deciding the law and facts of the case; because for the governor to interfere, under such circumstances, was to make himself nothing more or less than an appellate court, for the trial of criminal cases. The Constitution, in giving the pardoning power to the executive, only intended he should exercise that when the convicted man either had not a fair trial, or had some claims to the mercy of the governor that could not, according to the rules of law, form any part of his defense. This principle was, in November, 1844, applied to a man who was sent from Washington county, who had made an attempt to steal Judge Booker's negroes and horses, but had not, as was contended, gone far enough, in committing the act, to amount to a felony.

"We also turned our attention to the growing and corrupt practice of buying and selling offices. I informed him that I had defended two men in the Hardin Circuit Court for buying and selling the office of sheriff; and upon examining minutely the statutes in Great Britain and Kentucky they did not reach and embrace the evil that now existed; that the practice now was not to buy or sell an office, but to buy or sell a resignation, and thereby make a vacancy; which, in morals and sound policy, was as corrupt as to buy or sell an office, for it was but that at last, considering how the appoint-

*See note at the end of the speech.

ing power fulfilled the corrupt contract made by the parties; that such conduct was prejudicial to the public interest and the administration of the laws. We then agreed to put the practice down, as far as we could, of dealing in offices, or aiding or assisting in procuring vacancies; that whenever we suspected a man, who was an applicant for office, to have been guilty of an offense of that kind, to refuse him any appointment, unless he would make an oath that he neither directly or indirectly had dealt in offices, or in selling or buying a resignation or vacancy.

"The first man who applied to be appointed sheriff, was from the county of Cumberland, I believe. He would not take the oath; the appointment was refused. The next was a man from the north side of the Kentucky river, but the name of the county I forget. He would not take the oath; he shared the same fate. The next was some person from Jefferson, who was about to purchase the resignation of James Harrison, who was sheriff, at the price of two thousand dollars, if he could get the appointment. He refused to take the oath; the appointment was refused him. The next was from the county of Butler, who wanted the appointment of sheriff. We suspected that he had purchased the resignation of the acting sheriff, and required of him to take the oath; he said he would. I drew it in presence of the governor, gave it to the applicant; he swore to it before Wingate, and returned it to me. I filed it away in the secretary's office, and by the direction of the governor, the commission was prepared and executed immediately. Several other cases occurred during the winter of 1844 and part of the year 1845.

"When the governor was preparing his message in 1844, I urged him to open his administration by a bold and marked line of policy, on which I was building my hopes of giving the administration reputation; to recommend retrenchment in several particulars which I pointed out to him; and, also, to recommend new taxes, to fall upon the goods, wares, and merchandise consumed in the country, and upon the professions of men, and the salaries of officers; and by this means fifty thousand dollars could be added to the sinking fund, so that the commissioners could redeem the State debt in thirty years; to recommend the extension of the lock and dam system on the Kentucky river to Boonesborough, and the turnpike road to be extended from Crab Orchard to Cumberland Gap; the State's dividends on the locks and dams already built to aid in making the new locks and dams, and the State's dividends on the turnpike road from Louisville to Crab Orchard; to extend that turnpike to Cumberland Gap; that the works would progress slowly, but certainly, to their final finish and completion. To these suggestions of mine the governor remarked, that he would not put those recommendations I suggested in his first message, but would reflect on them until his next annual message.

"The next subject of political importance we conversed about was the nomination of Judge McKee to the Senate, as judge for the upper circuit,

which adjoins the Virginia State-line. Judge McKee had been commissioned for this circuit, the spring or summer before. The commission was *pro tempore* until the end of the next session of the General Assembly. Mr. McKee had accepted the commission given to him by Governor Letcher, and had been presiding as judge in the circuit for some months. He had conducted himself with great dignity and propriety, as judge, and his legal attainments qualified him well for the office. Moreover, nature had been exceedingly kind to him, in giving him a fine understanding, a clear and vigorous capacity, and not a kind of mind to be caught by the technicalities of the law. That kind of mind is indispensable for a judge. All the members of the Legislature from that circuit spoke in his praise, and recommended him, in the highest terms, to the governor. I urged the governor to make the nomination to the Senate. He did not say whether he would or not, but delayed it. I pressed it again and again; told him that it had been the invariable practice of the governors in Kentucky, when an officer had been appointed during the recess, and had conducted himself well, to nominate him to the Senate, and if he did not do it, the people would come to one of two conclusions, either that he had not treated him well, or that McKee had behaved badly in office, and the first conclusion they must come to, as every person from that region of country spoke in the highest terms of him as judge. The governor still put off the nomination, and finally remarked to me that ex-Governor Letcher was making himself too busy about it. I replied it was no objection to McKee's appointment; besides, it was commendable in Mr. Letcher, and more a matter of praise than censure for ex-Governor Letcher to take some interest in the welfare of Mr. McKee, as he was his nephew. He then used some expression or remark, but exactly the words I do not recollect, that he did not like George Robertson and Governor Letcher. McKee is the sister's son of Robertson. I then repeated to him, as an anecdote, a conversation between Bonaparte and one of his confidential friends, shortly after he was made First Consul. His friend asked him: 'What are you going to do with Bernadotte?' Bonaparte replied: 'Give him employment! Such talents as his must not go unemployed. Why did you ask the question?' His friend remarked: 'Because I knew you and Bernadotte were not friendly when in the army.' Bonaparte instantly answered, with apparent impatience: 'The First Consul of France never remembered the quarrels of General Bonaparte.' 'So,' said I, 'Governor Oswley must never recollect the quarrels of William Owsley. As governor, you act for the people, and not yourself.' I pointed out to him, also, the political disasters that would happen to the Whig party if he nominated John White to be judge, instead of McKee; that the interests of the Whigs demanded the services of White in Congress. All my arguments and entreaties were of no avail. I soon saw what was the matter: personal feelings in the governor. Mitchell had got back from West Tennessee; his

tracks, and Goodloe's, were plainly visible in the whole affair. I was taught a lesson—that I had no power. I have regretted a thousand times, since, that I had not then resigned my office of secretary; and I would have escaped all the troubles, vexations, and harassments I have experienced ever since; and this cup of bitterness that I am compelled to drain to the last dregs would have passed from me. The misfortunes and calamities that have befallen the Whigs, in that district, where they had three thousand majority, I need not repeat. The tale is melancholy; a Democrat represents it now in Congress. Surely, 'the distinguished Whig' deserves the thanks of the Democratic party for their unexpected and unlooked-for success.

"The governor, after that, withdrew all official interchange of sentiments with me; his confidence seemed to be solely placed in Mr. Mitchell. He has been, from that day to this, his oracle, into whose bosom he has poured his most secret thoughts. Papers of recommendation for appointment to office were sent to me, as secretary, to be laid before the governor; he would soon hear I had them, through Mitchell, I suspect. Then he would take especial pains to make the appointment without my knowing it, or getting a chance to lay the papers before him. Washington Ewing shared that fate; and so did Sherrod Williams, and likewise many others until at last it was generally known in Frankfort that it was fatal to an applicant's claim for an appointment, to be seen talking to me; and their friends in Frankfort would caution them against it. Very shortly after the first session of the Legislature, I became satisfied that the governor's administration was to be marked by no statesman-like system of policy; that it would signalize itself by nothing but a miserable hunt after offices for a few men.

"The governor had not been long in power until he got for Mr. Mitchell the clerkship to the commissioners of the sinking fund, in place of Mr. Harlan, at a salary of five hundred dollars a year. The governor forced Mr. Mitchell upon me at a salary of six hundred and sixty-six dollars; a year's perquisites of office worth about two hundred dollars—making thirteen hundred and sixty-six dollars. He would not agree he should be turned out of either office, and yet has the effrontery to complain that the business of the secretary's office had got behind.

"Some time in May, 1845, Benjamin Selby, the First Auditor died, leaving a large and helpless family; a son of age who had done all of the business in the office for years, exceedingly well qualified for the place—the salary would have enabled him to aid greatly in supporting his mother's family; and, moreover, he was strongly recommended for the office. What did the governor do? He turned a deaf ear to all young Selby's recommendations; a deaf ear to the sufferings of a helpless widow and children, and said to them, go out upon the world and starve. Before the First Auditor was buried, or about the time, a commission issued for Harry I. Bodley, a man of fortune, and formerly the clerk of the Fayette Circuit Court, and who had sold

it a few days before for about thirteen thousand five hundred dollars, of which fact the governor was fully apprised. That appointment formed an exception to the rule that he had made when he first came into office—that no man who had bought or sold an office should have an appointment; and what do you, gentlemen of the committee, suppose formed the basis of the exception? Nothing but this—that the governor's son, Boyle Owsley, had married Elizabeth Bodley, the sister of Harry I. Bodley.

"I determined, in June or July, 1845, to resign the office of secretary as soon as I could do it without appearing to be driven out by ill-treatment, and fixed on November, 1845, when I would go to Jackson, Mississippi, to attend the federal court. This intention I had communicated to several of my friends, and then gave up my law business in Frankfort and the adjacent counties, which I had undertaken, except a few cases in the Court of Appeals. Before the time arrived for me to resign, I think it was at the Meade Chancery Court, in August, 1845, I got a letter from a gentleman living in Frankfort, of high standing, to whom I had communicated my intention of resigning, that the governor threatened to impeach me or remove me; that it would look like a confession of judgment for me to resign in November. I determined not to resign then. In December I learned that the governor had drawn up his charges against me, and that he got the opinion of the attorney-general that he had a right to remove me from the office of secretary of State. The attorney-general had the vanity to boast of giving his opinion to the governor in writing, which is somewhat remarkable, considering the attorney-general's retiring modesty. I was in no wise alarmed by the opinion of the attorney-general, notwithstanding he is the highest law officer known to our Constitution and law. I believed I was right, and that was enough. I feared not the result. I dreaded not the whole force the governor could array against me. I knew some attorneys-general, and had heard of others. When the Cæsars of Rome wanted to spill the best and noblest blood of the city, the attorney-general was ready to support the charge against the innocent victim. Tiberius, Caligula, Nero, and Domitian had their willing and servile attorneys-general. So had Queen Elizabeth, when she wanted to put Mary, Queen of Scots, to death. So had James I., when he wanted to murder Sir Walter Raleigh. So had Robespierre, when the best blood of France was to be shed; when neither age, sex, nor condition, however innocent and illustrious, was any protection. If the descent be not too rapid and great, Governor Owsley has his willing attorney-general. The principle of all their actions is contained in these words, from the book of Isaiah: 'The ox he knoweth his owner, and the ass his master's crib.'

"Mr. Chairman, of the reconciliation which took place the 3d of January, 1846, between the governor and myself you have heard; I need not repeat it. The insults that were offered to me last winter, afterward, I have already

stated. I was restless and miserable. I intended to resign at the end of the session of the Legislature. George Robertson, a few days before the end of the session, took dinner at Colonel Davidson's, where I boarded, and when at table I casually remarked I intended to resign at the end of the session. He replied, do you know that there is a rumor among the governor's friends that you were to resign at the end of the session upon condition that the governor should not proceed with his contemplated motion against you in the Senate? I answered, I did not; that there was no such agreement; that I had rather die than to have made such an arrangement. I further remarked, I will hold on to the office until I can resign at a time when I can leave the office without its having the appearance that I bought my peace.

"In July I learned that my son had failed in getting into the military family of General Taylor, as was his original intention when he left Kentucky; that he was in the army as a volunteer, destitute of money, and bare of clothes, without receiving any pay. I determined to go to him in October, and then resign. I commenced preparing to leave for Mexico as early as last August. Before October arrived, the governor commenced his war with me, and how he has conducted it, you gentlemen, know. Instead of being in Mexico, as I expected, here I am now—the great State criminal of the day. The boys, as I pass along the streets, look at me with perfect astonishment, that Governor Owsley and Mr. Mitchell permit me to go at large.

"The governor complains that I was not enough at Frankfort to give him the needful aid and assistance in administering the government. Was there ever such insincerity? Does he not know he would not consult with me, and frequently locked his room door on me?

"About the 20th of May last, I got here. I met the governor and Thomas B. Stevenson seven miles from this place, on their way to Louisville. When I got to Frankfort I called on my assistant, Mr. Mitchell, to know the situation of the volunteers, and in what situation the matter stood, as the governor had gone to Louisville, and would not be back for some days. I wanted to know how to act in the matter. The Louisville Legion had been received, and was about to start for the seat of war. The report made me, in writing, is in these words:

"'Ten cavalry companies, ten infantry companies; reported full: one cavalry company, two infantry companies; reported but not full: three cavalry companies, seven infantry companies.'

"I accordingly received only such companies as were full, ninety-three made the number required by the order of the War Department, including officers, non-commissioned officers, musicians, and privates. The companies were tendering their services Friday night, Saturday, and Saturday night; and Sunday there was a great rush to get companies received. Whenever a company was full and the roll showed their names were genuine, I issued a certificate stating the company was received, and its name and number. I

rejected all companies offered that were not full. To receive a company not full, the governor could select his own officers, and they could go out and beat up for volunteers. But to receive no company that was not full, it gave companies at a distance a chance to get in, and gave the men a chance to elect their own officers. I acted on the above principles, and no other. I also contended the governor had, by the Constitution, the right to commission all the officers, from a general down; that he ought never to surrender the right; and that Butler and Combs should be the generals.

"Before the governor got back from Louisville, a letter signed 'Volunteers,' was brought from the post-office by the messenger of the secretary's office, and laid on my table in the secretary's office. I read it, handed it over to Mr. Lindsay, to see if he could find out the author; he returned after a short time and said he could not find out. He gave it to Adjutant Todd, of the volunteers, and he tried and could not find out the author. He gave the letter to Captain Chambers, who, I think, attended in the post-office. He came to me with the letter, and said it came from the secretary's office, and that Mr. Mitchell wrote it. I looked again at the handwriting, and replied that it was not the handwriting of Mr. Mitchell, but that I thought it was William Anderson's handwriting. He is the grandson of the governor and lived at his house. I showed the letter to several who are acquainted with William Anderson's handwriting. They all affirm it is his, and I can prove it is his. Here is the letter, gentlemen:

"'FRANKFORT, May 23, 1846.

"'BEN HARDIN: When your country needs your services you are never at your post. Now everything is done you come slipping in here to have some mercenary scoundrel, like yourself, put over us to command us in the Texas war. We intend to submit to no such thing. and give you distinct notice that unless you leave here we will scalp you before we start for the Rio Grande.

"'We want no traders put over us, to disgrace and sell us to our country's enemies, and make us perish in the mines of Mexico.

"'VOLUNTEERS.'

"Although the governor was not cognizant of the letter, as he was not in Frankfort, yet those who are concerned in it knew what would suit his palate, and I hold him as much responsible as if he were the author. This letter proves that the governor and his little party did not want to see me at Frankfort.

"There is another charge against me, made by the party who are in the confidence of the governor. That charge is too contemptible to be noticed, did it not show the spirit of persecution that hunts me down. The charge is that I am incompetent to do the business of the office. So far as the charge may be directed against my capacity, I have no answer to make. If my being before the people for forty years can not disprove that charge, I can not do it by anything I can say. If the governor and his friends allude to

my being crippled in my right arm, I admit the fact. The governor and Senate well knew it when I was appointed, for no man can see me one moment, face to face, and not see that I am crippled. Yet, I can write, even crippled as I am, as good a hand as the governor, and can *spell* what I write, and write our language *correctly*.

"You will remember, gentlemen of the committee, that when the committee overruled the objections of Mr. Kinkead, that the Senate could not go behind the qualifications of the nominee, and inquire whether there was a vacancy or not; he said he had nothing further to do with the trial or investigation. After I had finished the examination of the witnesses, on my part, one of the members of this honorable committee called Mr. Mitchell as a witness. That call, as I understand, was at the instance and suggestion of Mr. Kinkead, privately made, and came, originally, either from the governor or Mr. Mitchell, I have no doubt. Had they any other witness except Mr. Mitchell? None that I know of. Why was this plan adopted by Mr. Kinkead, Mr. Mitchell, and the governor? No reason for it but one, and that is obvious, and can not be misunderstood. If Mr. Kinkead had called Mr. Mitchell, then I intended to object to his competency. He has been dismissed as my deputy or assistant secretary. He is the assistant of Mr. Kinkead. If Mr. Kinkead holds the office, he receives annually six hundred and sixty-six dollars, paid him by the government, and about two hundred dollars, the fees of the office. If in this contest Mr. Kinkead loses the office, then Mr. Mitchell loses the appointment of assistant secretary, and about eight hundred and sixty-six dollars a year. His interest is clear, direct, and manifest in the result of the question now before the Senate. In the whole plan to get in the testimony of Mr. Mitchell, I can see Governor Owsley in it from beginning to end. It is the scheme of an old hackneyed lawyer well versed in pleas of abatement, and the trickeries of his profession. No man is better skilled in accomplishing that indirectly which he can not do directly. Hence, the necessity, gentlemen, as Mr. Mitchell is an interested witness, of receiving his evidence with great caution. In a great number of his statements, I do not recollect the facts as he does.

"I have now, gentlemen of the committee, finished the first branch of the question I intended and proposed to investigate, that is, the governor's charges against me. I have respectfully submitted my views of the law and facts upon each specification, as contained and exhibited in the message of the governor. I fear that I have trespassed upon your time, and drawn too heavily on your patience, gentlemen, already. If I have, I beg pardon. My character and reputation have been wantonly assailed. They are dear to me, and, in justice to my own feelings, I could not have said less.

"The last, or main branch of the question, which I propose to discuss, is the power of the governor to remove me without any cause whatever,

except his own mere will and pleasure; or, to speak with more truth than propriety, his caprice and passion. A great portion of what I have said, when answering the governor's charges and specifications in his message, will appropriately apply to either branch of the main question I intended to investigate in the outset of my address. I will not repeat it now, and only say those things I could not well introduce into the previous part of my speech.

"I will read to you, Mr. Chairman, that part of the Constitution which creates the office of secretary of State. It is to be found in the Constitution, article three, section twenty-four, and reads in these words:

"'SECTION 24. A secretary shall be appointed and commisioned during the term for which the governor shall have been elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto, before either house of the General Assembly, and shall perform such other duties as may be enjoined him by law.'

"The secretary has, besides the duties pointed out to him in the section just read, a number of other duties appertaining to his office. (See the fifth section of the Schedule of the Constitution.) In that section the votes for governor and lieutenant-governor are to be returned to the secretary, and, in case of a tie, he is, as secretary, to do a number of other official acts, which I will not enumerate. The section I allude to reads in these words:

"'SECTION 5. In order that no inconvenience may arise from the change made by this Constitution, in the time of holding the general election, it is hereby ordained that the first election for governor, lieutenant-governor, and members of the General Assembly shall commence on the first Monday in May, in the year eighteen hundred. The persons then elected shall continue in office during their several terms of service prescribed by this Constitution, and until the next general election, which shall be held after their said terms shall have respectively expired. The returns for the said first election of governor and lieutenant governor shall be made to the secretary within fifteen days from the day of election, who shall, as soon as may be, examine and count the same in the presence of at least two judges of the Court of Appeals, or district courts, and shall declare who are the persons thereby duly elected, and give them official notice of their election; and if any persons shall be equal and highest on the poll, the said judges and secretary shall determine the election by lot.'

"I will call your attention, Mr. Chairman, to the twenty-second section of the third article of the Constitution, for further duties to be performed by the secretary. It reads in these words:

"'SECTION 22. If the lieutenant-governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State, during the recess of the General Assembly, it shall be the duty of the secretary, for the time being, to convene the Senate, for the purpose of choosing a speaker.'

"I will invite your attention to the fifteenth section of the sixth article of the Constitution. There you will see other duties to be performed by the secretary; which section reads in these words:

"'SECTION 15. Returns for all elections for governor, lieutenant-governor, and members of the General Assembly, shall be made to the secretary for the time being.'

"Again, the ninth article of the Constitution, which prescribes the mode of calling a convention—there the secretary has duties to perform; which article reads in these words:

"'When experience shall point out the necessity of amending this Constitution, and when a majority of all the members elected to each house of the General Assembly shall, within the first twenty days of their stated annual session, concur in passing a law for taking the sense of the good people of this Commonwealth, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs and others, returning officers at the next general election, which shall be held for representatives, after the passage of such law, to open a poll for, and make a return to the the secretary, for the time being, of the names of all those entitled to vote for representatives who have voted for calling a convention; and if thereupon it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for a convention, the General Assembly shall direct that a similar poll shall be opened, and taken for the next year; and if, thereupon, it shall appear that a majority of all the citizens of this State entitled to vote for representatives, have voted for a convention, the General Assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the House of Representatives, and no more; to be chosen in the same manner and proportion, at the same places, and at the same time, that representatives are, by citizens, entitled to vote for representatives; and to meet within three months after the said election, for the purpose of re-adopting, amending, or changing this Constitution. But if it shall appear by the votes of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for a convention, a convention shall not be called.'

"The twenty-fourth section of article three, which I have read to you, Mr. Chairman, contains these words: 'And shall perform such other duties as may be enjoined him by law.' The duties which have, by various acts of Assembly, been enjoined on the secretary, I will not trouble you to read. They are numerous and diversified. I could not read all the acts passed at different times, prescribing the duties to be performed by the secretary in a day.

"The governor says I am his secretary. I affirm I am the secretary of the State. I am the people's secretary. I am, emphatically, the Constitution's secretary. My office is created by the Constitution; my duties are prescribed by the Constitution, and laws made in pursuance thereof, and to the people alone am I responsible, in the manner pointed out by the laws and Constitution. If I were the governor's secretary, then would my office

expire when he either died, resigned, or was removed by impeachment; for in these ways his office can be vacated. How can I be the governor's secretary and have so many other duties to perform independent of the governor? Is the governor responsible for my acts as secretary? I answer, he is not, in any way whatever. Does the secretary go out of office, if the governor's office becomes vacant before the term for which he was elected expires? Certainly not. Did not Lewis Sanders, who was appointed by Governor Breathitt, continue in office under Lieutenant-Governor Morehead, until he, Sanders, resigned? Did not Mr. Bullock, who was appointed by Governor Clarke, continue in office after Governor Clarke died, under Lieutenant-Governor Wickliffe, without a new appointment? He did. These two cases go conclusively to prove that the secretary is the secretary of the Constitution, for the term of four years, if he so long behaves well, without reference to the governor at all.

"The secretary 'is to keep a fair register, and attest all the official acts of the governor; and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto, before either branch of the General Assembly.' Those very duties, required of the secretary, if there were nothing else, show that he is independent of the governor. Is he only to register what the governor tells him to do? No; but he is to keep a fair register. Keep it as the governor directs? Surely not. But to keep it as the facts are, according to his own judgment, as a sworn officer under the Constitution. Suppose the governor was acting badly, in his official capacity, and from the fear and dread of an impeachment, was to direct the secretary to make false entries in the executive journal, what would be the duty of the secretary then? Would it be to write what the governor told him, or to do what the Constitution, the law, and his oath, required of him—that is 'to keep a fair register?' Every man will admit, at once, that he is bound by his oath, notwithstanding the governor may direct to the contrary, to do as the Constitution requires—that is, 'to keep a fair register?' When you arrive at that admission or conclusion, that is an end to the question—that he is not the governor's secretary, but the secretary of the Constitution. How can you expect from him a faithful discharge of his duty practically, if the performance of that is opposed to the governor's will, when for that very act he can and will turn him out? If you give the governor the power to remove the secretary at his will and pleasure, what security have the people that he will perform those duties enjoined on him by the Constitution and laws, and, above all things, 'keep a fair register?'

"If the secretary is prosecuted for a high misdemeanor in office, by an impeachment, and it is clearly proved, is it any defense for him to say, the governor told him to do it? We know that it would be no defense. Yet, it ought to be a good defense, if he be the governor's secretary, and bound to do his bidding. Will you adopt, gentlemen of the committee, such a con-

struction of the Constitution as to make a high constitutional officer of this government the mere tool and dependent creature of the governor; or, will you have him an independent, free man, alone responsible to his God and his country for his official acts? To his God, because he takes an oath to do his duty faithfully; and to his country, through his official responsibilities. No, gentlemen, leave him free; let him feel the pride of an American citizen, and not be compelled to bow and cringe, as his Excellency, or his Majesty, Governor Owsley, wrapped up in the folds of his fine cloak, may proudly stalk by him, like Solomon, arrayed in all his glory.

"If the governor has the power to remove the secretary, he must find that power somewhere else than in the bold assertions, that he is his secretary, and not the secretary of the Constitution and the people. Such an extravagant pretension can not be allowed—it can not be tolerated one moment. The governor claims the power to remove the secretary, because he can fill up the vacancies. I have already commented on that part of the Constitution, and his claim under it.

"The governor asserts his power to remove the secretary under this part of the Constitution: 'He (to-wit: the governor) shall take care the laws be faithfully executed.' What is the fair interpretation of that clause in the Constitution? It is this, he is to furnish the military power to execute the laws, if the ordinary officers of government can not enforce them; he is to see that criminals shall not escape, and when they fly from justice, offer rewards for their apprehension, and demand them of the governor of sister States, if they have fled there; he is, as governor, to exercise a general superintendency and supervision over the whole administration of the government, and give notice to the Legislature, from time to time, if there be any defect in the laws, or in the administration of the laws.

"If this power, under the section I have read, to see the laws faithfully executed, goes beyond the rules and limits I have given to it, I ask, how far? Where is the stopping place? If the governor can turn out the secretary at his will and pleasure, under the power to see the laws faithfully executed, why not every other officer in the government? Why not say to our judges of the circuit courts and the Court of Appeals, you, gentlemen, do not decide according to my judgment? I will tell you what kind of a judgment to enter, and if you do not do it. I will remove you, for I must see the laws faithfully executed. The governor can hold the same language as to clerks, sheriffs, and all executive officers. No officer in this government can plead and say, turn us out in the manner prescribed in the Constitution. In vain the judges and justices will say, we can alone be turned out by impeachment, or an address of two-thirds of each branch of the Legislature, where we can have a fair trial. The executive officers can make the same appeal to the Constitution. All these appeals avail nothing. The governor can make the same answer to them he can to the secretary. I am to see the

laws faithfully executed, and under that power given me, I have a right, as an incident to that power, to turn you out; and I am alone the judge whether you execute the laws faithfully or not. They may all, with one voice, appeal, again and again, for a fair constitutional trial, of being heard, and have the witnesses who swear against them face to face—it will amount to nothing, whenever the governor's claim of removal from office is tolerated to the extent he contends for—then is there but one power in the State. All the departments and offices concentrate in the governor alone. Such tyranny and despotism must be put down. These high claims of the governor are not imaginary, gentlemen. They are partially put into operation against me.

"The governor claims the power to remove me, because he nominated me to the Senate, and signed my commission. That is a duty he was required to perform by the Constitution. If the power of appointment gave the power of removal, as a consequence then, the power would not be in the governor alone, but in the Senate and governor.

"The Constitution of the United States and Kentucky never contemplated that kind of responsibility in the officers of their respective governments. According to that rule, the Electoral College can meet again in their respective States and remove Mr. Polk. The several Legislatures of the States can revoke and annul the election of the senators of the United States, and the constituents of the members of the House of Representatives can nullify their elections and call them home. There is no such responsibility known to the Constitution of the United States. The president is responsible to the people by an impeachment, and in no other way. The senators are responsible to the Senate by the power of expulsion. In the same way the representatives are responsible to the House of Representatives. Take our state government. Are you liable to be recalled, gentlemen, by the people who elected you? Can they assemble in their respective counties and places of voting and revoke your elections? No; certainly not. How is the governor himself responsible to the people? By impeachment. The people can not meet and nullify his election The governor had better be a little careful how he presses the contrary principle; for, if the people could get a hold of him, he would go out with a much larger majority than he came in. The vote would be nearly unanimous. A more absurd and monstrous proposition could not be presented to the mind of man than this—that the power of appointment carried with it, as an incident, the power of removal.

"To prove to you, gentlemen, that the power of appointment does not carry with it the power of removal, I will refer you to the case of Marbury against Madison, decided in the Supreme Court of the United States. The same decision, also, proves another position—that whenever an officer is commissioned for five years, to hold for that time during good behavior, that during those five years he holds by the same tenure as if he held for life, or

good behavior, which decision is to be found in Peter's Condensed Reports, volume I, page 268, and so much of it as applies to this case reads in these words :

" ' At the December term, 1801, William Marbury, Dennis Ramsay, Robert Townsend Hooe, and William Harper, by their counsel, severally moved the court for a rule to James Madison, secretary of State of the United States, to show cause why a mandamus should not issue commanding him to cause to be delivered to them respectively, their several commissions as justices of the peace, in the District of Columbia. This motion was supported by affidavits of the following facts : That notice of this motion had been given to Mr. Madison; that Mr. Adams, the late President of the United States, nominated the applicants to the Senate for their advice and consent to be appointed justices of the peace of the District of Columbia; that the Senate advised and consented to the appointments; that commissions in due form were signed by the said president appointing them justices, etc., and that the seal of the United States was in due form affixed to the said commissions by the secretary of State; that the applicants have requested Mr. Madison to deliver them their said commissions, who has not complied with that request; and that their said commissions are withheld from them; that the applicants have made application to Mr. Madison, as secretary of State of the United States, at his office, for information whether the commissions were signed and sealed as aforesaid; that explicit and satisfactory information has not been given in answer to that inquiry, either by the secretary of State or any officer in the department of State; that application has been made to the secretary of the Senate for a certificate of the nomination of the applicants, and of the advice and consent of the Senate, who has declined giving such a certificate; whereupon a rule was made to show cause on the fourth day of this term. This rule having been duly served,

" ' Mr. Jacob Wagner and Mr. Daniel Brent, who had been summoned to attend the court, and were required to give evidence, objected to be sworn, alleging that they were clerks in the department of State, and not bound to disclose any facts relating to the business or transactions of the office.

" ' The court ordered the witnesses to be sworn and their answers taken in writing; but informed them that when the questions were asked they might state their objections to answering each particular question, if they had any.

" ' Mr. Lincoln, who had been the acting secretary of State, when the circumstances stated in the affidavit occurred, was called upon to give testimony. He objected to answering. The questions were put in writing.

" ' The court said there was nothing confidential required to be disclosed. If there had been, he was not obliged to answer it, and if he thought that anything was communicated to him confidentially he was not bound to disclose, nor was he obliged to state anything which would criminate himself.

" ' The questions argued by the counsel for the relators were :

" ' *First:* Whether the Supreme Court can award the writ of mandamus in any case.

" ' *Second:* Whether it will lie to a secretary of State in any case whatever.

" ' *Third:* Whether in the present case the court may award a mandamus to James Madison, secretary of State.

" ' Mr. Chief-Justice Marshall delivered the opinion of the court.

"'At the last term, on the affidavits then read and filed with the clerk, a rule was granted in this case, requiring the secretary of State to show cause why a mandamus should not issue, directing him to deliver to William Marbury his commission as a justice of the peace for the county of Washington, in the District of Columbia.

"'No cause has been shown, and the present motion is for a mandamus. The peculiar delicacy of this case, the novelty of some of its circumstances, and the real difficulty attending the points which occur in it, require a complete exposition of the principles on which the opinion to be given by the court is founded. These principles have been, on the side of the applicant, very ably argued at the bar. In rendering the opinion of the court, there will be some departure in form, though not in substance, from the points stated in that argument.

"'In the order in which the court has viewed this subject, the following questions have been considered and decided:

"'*First:* Has the applicant a right to the commission he demands?

"'*Second:* If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

"'*Third:* If they do afford him a remedy, is it a mandamus issuing from this court?

"'The first object of inquiry is,

"'*First:* Has the applicant a right to the commission he demands?

"'His right originates in an act of Congress passed in February, 1801, concerning the District of Columbia.

"'After dividing the district into two counties, the eleventh section of this law enacts "that there shall be appointed in and for each of the said counties, such number of discreet persons to be justices of the peace as the President of the United States shall, from time to time, think expedient, to continue in office for five years."

"'It appears from the affidavits that, in compliance with this law, a commission for William Marbury as a justice of the peace for the county of Washington was signed by John Adams, then President of the United States, after which the seal of the United States was affixed to it; but the commission has never reached the person for whom it was made out.

"'In order to determine whether he is entitled to this commission, it becomes necessary to inquire whether he has been appointed to the office. For, if he has been appointed, the law continues him in office for five years, and he is entitled to the possession of those evidences of office, which, being completed, became his property.

"'The second section of the second article of Constitution declares that, "the president shall nominate, and by and with the advice and consent of the Senate, shall appoint embassadors, other public ministers and consuls, and all other officers of the United States, whose appointments are not otherwise provided for."

"'The third section declares that, "he shall commission all the officers of the United States."

"'An act of Congress directs the secretary of State to keep the seal of the United States, "to make out and record and affix the said seal to all civil commissions to officers of the United States, to be appointed by the president, by and with the consent of the Senate, or by the president alone; provided that the said seal shall not be affixed to any commission before the same shall have been signed by the President of the United States."

"'These are the clauses of the Constitution and laws of the United States which affect this part of the case. They seem to contemplate three distinct operations:

"'*First:* The nomination. This is the sole act of the president, and is completely voluntary.

"'*Second:* The appointment. This is also the act of the president, and is also a voluntary act, though it can only be performed by and with the advice and consent of the Senate.

"'*Third:* The commission. To grant a commission to a person appointed, might, perhaps, be deemed a duty enjoined by the Constitution. "He shall," says that instrument, "commission all the officers of the United States." The acts of appointing to office, and commissioning the person appointed, can scarcely be considered as one and the same; since the power to perform them is given in two separate and distinct sections of the Constitution. The distinction between the appointment and the commission will be rendered more apparent by adverting to that provision in the second section of the second article of the Constitution, which authorizes Congress "to vest by law the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments;" thus contemplating cases where the law may direct the president to commission an officer appointed by the courts or by the heads of departments. In such a case, to issue a commission would be apparently a duty distinct from the appointment, the performance of which, perhaps, could not legally be refused.

"'Although that clause of the Constitution which requires the president to commission all the officers of the United States may never have been applied to officers appointed otherwise than by himself, yet it would be difficult to deny the legislative power to apply it to such cases. Of consequence the constitutional distinction between the appointment to an office and the commission of an officer who has been appointed, remains the same as if in practice the president had commissioned officers appointed by an authority other than his own.

"'It follows, too, from the existence of this distinction, that, if an appointment was to be evidenced by any public act other than the commission, the performance of such public act would create the officer; and if he was not removable at the will of the president, would either give him a right to his commission or enable him to perform the duties without it.

"'These observations are premised solely for the purpose of rendering more intelligible those which apply more directly to the particular case under consideration.

"'This is an appointment made by the president, by and with the advice and consent of the Senate, and is evidenced by no act but the commission itself. In such a case, therefore, the commission and the appointment seem inseparable; it being almost impossible to show an appointment otherwise than by proving the existence of a commission, still the commission is not necessarily the appointment, though conclusive evidence of it.

"'But at what stage does it amount to this conclusive evidence?

"'The answer to this question seems an obvious one. The appointment, being the sole act of the president, must be completely evidenced when it is shown that he has done everything to be performed by him.

"'Should the commission, instead of being evidence of an appointment, even be considered as constituting the appointment itself, still it would be

made when the last act to be done by the president was performed, or, at furthest, when the commission was complete.

" 'The last act to be done by the president is the signature of the commission. He has then acted on the advice and consent of the Senate to his own nomination. The time for deliberation has then passed. He has decided. His judgment on the advice and consent of the Senate concurring with his nomination has been made, and the officer is appointed. This appointment is evidenced by an open, unequivocal act; and being the last act required from the person making it, necessarily excludes the idea of its being, so far as respects the appointment, an inchoate and incomplete transaction.

" 'Some point of time must be taken when the power of the executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And this power has been exercised when the last act, required from the person possessing the power, has been performed. This last act is the signature of the commission. This idea seems to have prevailed with the Legislature when the act passed converting the department of foreign affairs into the department of State. By that act it is enacted, that the secretary of State shall keep the seal of the United States, "and shall make out and record, and shall affix the said seal to all civil commissions to officers of the United States, to be appointed by the president," "provided that the said seal shall not be affixed to any commission, before the same shall have been signed by the President of the United States; nor to any other instrument or act, without the special warrant of the president therefor."

" 'The signature is a warrant for affixing the great seal of the commission; and the great seal is only to be affixed to an instrument which is complete. It attests, by an act supposed to be of public notoriety, the verity of the presidential signature.

" 'It is never to be affixed till the commission is signed, because the signature, which gives force and effect to the commission, is conclusive evidence that the appointment is made.

" 'The commission being signed, the subsequent duty of the secretary of State is prescribed by law, and not to be guided by the will of the president. He is to affix the seal of the United States to the commission, and is to record it.

" 'This is not a proceeding which may be varied, if the judgment of the executive shall suggest one more eligible; but is a precise course accurately marked out by law, and is to be strictly pursued. It is the duty of the secretary of State to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts, in this respect, as has been very properly stated at the bar, under the authority of law, and not by the instruction of the president. It is a ministerial act which the law enjoins on a particular officer for a particular purpose.

" 'If it should be supposed that the solemnity of affixing the seal is necessary, not only to the validity of the commission, but even to the completion of an appointment, still, when the seal is affixed, the appointment is made, and the commission is valid. No other solemnity is required by law; no other act is to be performed on the part of the government. All that the executive can do to invest the person with his office is done; and unless the appointment be then made, the executive can not make one without the co-operation of others.

"'After searching anxiously for the principles on which a contrary opinion may be supported, none have been found which appear of sufficient force to maintain the opposite doctrine.

"'Such as the imagination of the court could suggest, have been very deliberately examined, and after allowing them all the weight which it appears possible to give them, they do not shake the opinion which has been formed.

"'In considering this question, it has been conjectured that the commission may have been assimilated to a deed, to the validity of which, delivery is essential.

"'This idea is founded on the supposition that the commission is not merely evidence of an appointment, but is itself the actual appointment; a supposition by no means unquestionable. But for the purpose of examining this objection fairly, let it be conceded that the principle claimed for its support is established.

"'The appointment being, under the Constitution, to be made by the president personally, the delivery of the deed of appointment, if necessary to its completion, must be made by the president also. It is not necessary that the delivery should be made personally to the grantee of the office; it never is so made. The law would seem to contemplate that it should be made to the secretary of State, since it directs the secretary to affix the seal to the commission after it shall have been signed by the president. If then the act of livery be necessary to give validity to the commission, it has been delivered when executed and given to the secretary for the purpose of being sealed, recorded, and transmitted to the party.

"'But in all cases of letters patent, certain solemnities are required by law, which solemnities are the evidences of the validity of the instrument. A formal delivery to the person is not among them. In cases of commissions, the sign manual of the president, and the seal of the United States, are those solemnities. This objection, therefore, does not touch the case.

"'It has also occurred as possible, and barely possible, that the transmission of the commission, and the acceptance thereof, might be deemed necessary to complete the right of the plaintiff.

"'The transmission of the commission is a practice directed by convenience, but not by law. It can not, therefore, be necessary to constitute the appointment which must precede it, and which is the mere act of the president. If the executive required that every person appointed to an office should himself take means to procure his commission, the appointment would not be the less valid on that account. The appointment is the sole act of the president; the transmission of the commission is the sole act of the officer to whom that duty is assigned, and may be accelerated or retarded by circumstances which can have no influence on the appointment. A commission is transmitted to a person already appointed; not to a person to be appointed or not, as the letter enclosing the commission should happen to get into the post-office and reach him in safety, or to miscarry.

"'It may have some tendency to elucidate this point to inquire whether the possession of the original commission be indispensably necessary to authorize a person appointed to any office to perform the duties of that office. If it was necessary, then a loss of the commission would lose the office. Not only negligence, but accident or fraud, fire or theft, might deprive an individual of his office. In such a case, I presume it could not be doubted but that a copy from the record of the office of the secretary of

State would be, to every intent and purpose, equal to the original. The act of Congress has expressly made it so. To give that copy validity, it would not be necessary to prove that the original had been transmitted and afterward lost. The copy would be complete evidence that the original had existed, and that the appointment had been made, but not that the original had been transmitted. If, indeed, it should appear that the original had been mislaid in the office of State, that circumstance would not affect the operation of the copy. When all the requisites have been performed which authorize a recording officer to record any instrument whatever, and the order for that purpose has been given, the instrument is in law considered as recorded, although the manual labor of inserting it in a book kept for that purpose may not have been performed.

"'In the case of commissions, the law orders the secretary of State to record them. When, therefore, they are signed and sealed, the order for their being recorded is given; and whether inserted in the book or not, they are in law recorded.

"'A copy of this record is declared equal to the original, and the fees to be paid by a person requiring a copy are ascertained by law. Can a keeper of a public record erase therefrom a commission which has been recorded? Or can he refuse a copy thereof to a person demanding it, on the terms prescribed by law?

"'Such a copy would, equally with the original, authorize the justice of the peace to proceed in the performance of his duty, because it would, equally with the original, attest his appointment.

"'If the transmission of a commission be not considered as necessary to give validity to an appointment, still less is its acceptance. The appointment is the sole act of the president; the acceptance is the sole act of the officer, and is, in plain, common sense, posterior to the appointment. As he may resign, so may he refuse to accept; but neither the one nor the other is capable of rendering the appointment a nonentity.

"'That this is the understanding of the government, is apparent from the whole tenor of its conduct.

"'A commission bears date, and the salary of the officer commences from his appointment, not from the transmission or acceptance of his commission. When a person, appointed to any office, refuses to accept that office, the successor is nominated in the place of the person who has declined to accept, and not in the place of the person who had been previously in office and had created the original vacancy.

"'It is, therefore, decidedly the opinion of the court that, when a commission has been signed by the president, the appointment is made; and that the commission is complete when the seal of the United States has been affixed to it by the secretary of State.

"'When an officer is removed at the will of the executive, the circumstance which completes his appointment is of no concern, because the act is at any time revocable; and the commission may be arrested, if still in the office. But when the officer is not removable at the will of the executive, the appointment is not revocable and can not be annulled. It has conferred legal rights which can not be resumed.

"'The discretion of the executive is to be exercised until the appointment has been made. But having once made the appointment, his power over the office is terminated in all cases, where by law the officer is not removable by him. The right to the office is *then* in the person appointed,

and he has the absolute, unconditional power of accepting or rejecting it. Mr. Marbury, then, since his commission was signed by the president and sealed by the secretary of State, was appointed; and as the law creating the office gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable, but vested in the officer legal rights, which are protected by the laws of his country.

"'To withhold his commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

"'This brings us to the second inquiry, which is:

"'*Second:* If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

"'The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.

"'In the third volume of his Commentaries, page 23, Blackstone states two cases in which a remedy is afforded by mere operation of law.

"'"In all other cases," he says "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded."

"'And afterward, page 109 of the same volume, he says, "I am next to consider such injuries as are cognizable by the courts of the common law. And herein I shall for the present only remark, that all possible injuries whatsoever, that did not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals, are, for that very reason, within the cognizance of the common law courts of justice, for it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy and every injury its proper redress."

"'The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right.

"'If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar character of the case.

"'It behooves us, then, to inquire whether there be in its composition any ingredient which shall exempt it from legal investigation or exclude the injured party from legal redress. In pursuing this inquiry the first question which presents itself, is, whether this can be arranged with that class of cases which comes under the description of *damnum absque injuria*—a loss without an injury.

"'This description of cases never has been considered, and it is believed never can be considered, as comprehending offices of trust, of honor, or of profit. The office of justice of peace in the District of Columbia is such an office; it is, therefore, worthy of the attention and guardianship of the laws. It has received that attention and guardianship. It has been created by special act of Congress, and has been secured, so far as the laws can give security to the person appointed to fill it, for five years. It is not, then, on account of the worthlessness of the thing pursued that the injured party can be alleged to be without remedy.

"'It is in the nature of the transaction. Is the act of delivering or withholding a commission to be considered as a mere political act belonging to

the executive department alone, for the performance of which entire confidence is placed by our Constitution in the supreme executive; and for any misconduct respecting which the injured individual has no remedy.

"'That there may be such cases is not to be questioned; but that every act of duty to be performed in any of the great departments of government constitutes such a case is not to be admitted.

"'By the act concerning invalids, passed in June, 1794, the secretary of war is ordered to place on the pension list all persons whose names are contained in a report previously made by him to Congress. If he should refuse to do so, would the wounded veteran be without remedy? Is it to be contended that where the law in precise terms directs the performance of an act in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country?

"'Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained. No act of the Legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrines of the common law. After stating that personal injury from the king to a subject is presumed to be impossible, Blackstone, volume III, page 255, says: "But injuries to the rights of property can scarcely be committed by the crown without the intervention of its officers, for whom the law, in matters of right, entertains no respect or delicacy, but furnishes various methods of detecting the errors and misconduct of those agents by whom the king has been deceived and induced to do a temporary injustice."

"'By the act passed in 1796, authorizing the sale of lands above the mouth of Kentucky river, the purchaser, on paying his purchase money, becomes completely entitled to the property purchased; and on producing to the secretary of State the receipt of the treasurer upon a certificate required by the law, the President of the United States is authorized to grant him a patent. It is further enacted, that all patents shall be countersigned by the secretary of State, and recorded in his office. If the secretary of State should choose to withhold this patent, or the patent being lost, should refuse a copy of it, can it be imagined that the law furnishes to the injured person no remedy?

"'It is not believed that any person whatever would attempt to maintain such a proposition.

"'It follows, then, that the question, whether the legality of an act of the head of a department be examinable in a court of justice or not, must always depend on the nature of that act.

"'If some acts be examinable, and others not, there must be some rule of law to guide the court in the exercise of its jurisdiction.

"'In some instances there may be difficulty in applying the rule to particular cases; but there can not, it is believed, be much difficulty in laying down the rules.

"'By the Constitution of the United States, the president is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. To aid him in the performance of these duties he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

"'In such cases their acts are his acts, and whatever opinion may be entertained of the manner in which executive discretion may be used, still there

exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being entrusted to the executive, the decision of the executive is conclusive. The application of this remark will be perceived by adverting to the act of Congress for establishing the department of foreign affairs. This officer, as his duties were prescribed by that act, is to conform precisely to the will of the president. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts.

"'But when the Legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law, is amenable to the laws for his conduct, and can not at his discretion sport away the vested rights of others.

"'The conclusion from this reasoning is that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the president, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy.

"'If this be the rule, let us inquire how it applies to the case under the consideration of the court.

"'The power of nominating to the Senate, and the power of appointing the person nominated, are political powers, to be exercised by the president, according to his own discretion. When he has made an appointment, he has exercised his whole power, and his discretion has been completely applied to the case. If, by law, the officer be removable at the will of the president, then a new appointment may be immediately made, and the rights of the officer are terminated. But, as a fact which has existed can not be made never to have existed, the appointment can not be annihilated; and, consequently, if the officer is by law not removable at the will of the president, the rights he has acquired are protected by the law, and are not resumable by the president. They can not be extinguished by executive authority, and he has the privilege of asserting them in like manner as if they had been derived from any other source.

"'The question whether a right has vested or not, is, in its nature, judicial, and must be tried by the judicial authority. If, for example, Mr. Marbury had taken the oaths of a magistrate, and proceeded to act as one, in consequence of which a suit had been instituted against him, in which his defense had depended upon his being a magistrate, the validity of his appointment must have been determined by judicial authority.

"'So, if he conceives that by virtue of his appointment he has a legal right either to the commission which has been made out for him, or to a copy of that commission, it is equally a question examinable in a court, and the decision of the court upon it must depend upon the opinion entertained on his appointment.

"'That question has been discussed, and the opinion is that the latest point of time which can be taken as that at which the appointment was complete and evidenced, was when, after the signature of the president, the seal of the United States was affixed to the commission.

"'It is, then, the opinion of the court, that by signing the commission of Mr. Marbury, the President of the United States appointed him a justice of the peace for the county of Washington, in the district of Columbia; and that the seal of the United States, affixed thereto by the secretary of State, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and that the appointment conferred on him a legal right to the office for the space of five years.'

"What are the responsibilities of the secretary of State? His oath of office is one. His liability to be sued by each individual injured by him, either because he would not act or acted wrong; and his responsibility to the people, by impeachment. But the governor says that the Constitution and the laws do not say that the secretary is in no other way responsible. To that I answer I am in no way responsible for my actions, either officially or individually, unless I am made so by the Constitution and the law. Is there a secret under-responsibility to the governor unless there is a constitutional negative upon such power? The reverse is the case. The governor has no power, unless the same is given him by the Constitution and law.

"This question has been decided by the Senate of Illinois, and also the Court of Appeals of that State. The governor of that State attempted to remove the secretary, whose name was Fields, and appointed a McClernand in his place. The Senate of that State decided the governor of that State had not the power to remove the secretary of State. The Constitution of Illinois, in relation to the secretary of State, is nearly like that of Kentucky. The clause I refer to is to be found in volume II, Scammon's Reports, page 82, and reads in these words:

"'ARTICLE 3, SEC. 20. The governor shall nominate, and by and with the advice and consent of the Senate, appoint a secretary of State, who shall keep a fair register of the official acts of the governor, and, when required, shall lay the same, and all papers, minutes, and vouchers relative thereto, before either branch of the General Assembly, and shall perform such other duties as shall be assigned him by law.'

"You will perceive, Mr. Chairman, that the section I have just read, does not give the secretary the office by the tenure of good behavior; but, yet it was construed to have that effect, and that he was not responsible to the governor, but to the people of Illinois.

"From the same, as a part of the opinion of the Court of Appeals of Illinois, I will read a few extracts. Page 118 you will find these words:

"'The governor is, neither in fact nor in theory, personally or politically responsible for the official conduct of the secretary, or any other officer. He can not assign him the performance of a single duty, or control him in the performance of those assigned by law. He does not move in the executive circle, as has been said, but in that marked out by the Constitution and the law, separate, distinct from, and independent of, that of the governor. He looks to the law for his authority and duties, and not to the governor, and to that, and that alone, he is responsible for their performance.'

"I will read from the same book, page 160, a part of the same opinion, which reads in these words:

"'*Third:* Does that provision of the Constitution which requires that the governor "shall take care that the laws be faithfully executed," empower him to remove the secretary, or any other officer, at his will and pleasure? If, as has been shown before, the governor possesses the power of removal under this provision, then he may not only remove the secretary of State, but every other officer in the State, except judges. For the reasons heretofore given, no such power can be implied in this case. Nor is it necessary that the governor should have this power, in order to enable him to comply with this injunction of the Constitution. All that the Constitution contemplates is that the governor shall exercise a general oversight over the operations of the laws, and use such means as the laws have placed in his hands to overcome opposition and remove obstacles to their due enforcement. If the laws be defective, or inefficient, it would doubtless be his duty to inform the Legislature of such defects, and point out proper remedies. If the laws be opposed by force, it would be his duty, as the chief executive of the State, to call out the militia to aid the civil officer to put down such opposition. If a crime be committed, and the perpetrator escape into another State or country, it would be his duty to demand of the executive of the State where the fugitive had fled that he be delivered up to the courts of this State for trial. Should a flagrant crime be secretly committed, he may, by proclamation, give notice of the fact, and offer a reward for the discovery of the perpetrator, and for his apprehension. In these and similar ways, I think the governor will find full scope for his vigilance, in taking "care that the laws be faithfully executed." Should the secretary, or any other officer, neglect or refuse to perform his duty, the laws possess sufficient energy to compel compliance, without resorting to the power of removal. If the secretary refuses or neglects to perform any official duty, he may be impeached. He may also be compelled to perform the duty by *mandamus*. If he, or any other officer, act partially or oppressively, from a malicious or corrupt motive, it is a fundamental principle of our government that he may be punished, by a criminal prosecution. The sheriffs of the different counties have more duties to perform, in relation to the execution of the laws, than all the other officers in the State; yet, the present laws are abundantly sufficient to coerce these officers to a faithful discharge of their duties. For malfeasance, oppression, partiality in the discharge of their duties, or for any palpable omission of duty, they are liable to be indicted, and on conviction, to be removed from office. In addition to this, a party injured has a civil action, and for many neglects of duty, the courts of record have power to imprison them for contempt. I therefore conclude that it was not necessary, to enable the governor to take care that the laws be faithfully executed, that he should possess the royal prerogative to remove the secretary, or any other officer. If, however, as I have before observed, the present laws are inefficient, it will be within the scope of legislative competency to provide other means to secure the faithful performance of official duties. Should the Legislature deem it wise to vest this power in the governor, they have the right to do so; and if the governor is to have this power, it is much better that it should be by legislative grant than by the Constitution.'

"Again: I will call the attention of the committee to another part of the opinion, page 182, which reads in these words:

" ' All the duties of the secretary are either defined in the Constitution or in the laws: and nowhere is any authority given to the governor, either to direct what he shall do, how he shall do it, or even to call on him for counsel or advice. On the contrary, I think it is fairly inferable from the terms of the Constitution, not only that the secretary is not a confidential officer of the governor, but that it was intended he should not be one. The secretary, by the Constitution, when required, " shall lay the official acts of the governor, and all papers, minutes, and vouchers relative thereto, before either branch of the General Assembly." If the secretary is to be considered a confidential officer of the governor, and removable at his pleasure, it would be in the power of the governor, at any time, if he wished to conceal his acts from the Legislature, to defeat this provision of the Constitution. And if the governor did not resort to removal, and was unwilling his acts should be known by the General Assembly, this confidential officer would be placed in the unpleasant dilemma of betraying the confidence of his principal, or violating the Constitution of his country. But is the secretary of State a confidential officer? The duties of his office, in all the States of the Union, are essentially the same.'

" I find in a book of two volumes, containing the speeches of Henry Clay, the following extracts :

" ' The mere act of dismission or removal may be of an executive nature, but the judgment or sentence which precedes it is a function of a judicial and not executive nature. Impeachments which, as has been already observed, are the only mode of removal from office expressly provided for in the Constitution, are to be tried by the Senate, acting as a judicial tribunal. In England, and in all other States, they are tried by judicial tribunals.

" ' In several of the States removal from office sometimes is effected by the legislative authority, as in the case of judges, on the concurrence of two-thirds of the members. The administration of the laws of the several States proceeds regularly without the exercise on the part of the governor of any power similar to that which is claimed for the president. In Kentucky, and in other States, the governor has no power to remove sheriffs, collectors of the revenue, clerks of courts, or any one officer employed in administration; and yet the governor, like the president, is constitutionally enjoined to see that the laws are faithfully executed.

" ' It is contended that the president can not see that the laws are faithfully executed unless he possesses the power of removal. That injunction of the Constitution imports a mere general superintendence, except where he is specially charged with the execution of a law. It is not necessary that he should have the power of dismission. It will be a sufficient security against the abuses of subordinate officers that the eye of the president is upon them, and that he can communicate their delinquency. The State executives do not possess this power of dismission. In several, if not all, the States, the governor can not even dismiss the secretary of State; yet we have heard no complaints of the inefficiency of State executives or of the administration of the laws of the States. The president has no power to dismiss the judiciary; and it might be asked, with equal plausibility, how he could see that the laws are executed if the judges will not conform to his opinion, and he can not dismiss them?

" ' The president is enjoined by the Constitution to take care that the laws be faithfully executed. Under this injunction, the power of dismission is

claimed for him ; and it is contended that if those charged with the execution of the laws attempt to execute them in a sense different from that entertained by the president, he may prevent it or withhold his co-operation. It would follow, that if the judiciary give to the law an interpretation variant from that of the president, he would not be bound to afford means which might become necessary to execute their decision. If these pretensions are well founded, it is manifest that the president, by means of a veto, in arresting the passage of laws which he disapproves, and the power of expounding those which are passed, according to his own sense of them, will become possessed of all the practical authority of the whole government. If the judiciary decide a law contrary to the president's opinion of its meaning, he may command the marshal not to execute the decision, and urge his constitutional obligation to take care that the laws be faithfully executed. It will be recollected, perhaps, by the Senate, that during the discussion on the deposit question, I predicted that the day would arrive when a president, disposed to enlarge his powers, would appeal to his official oath as a source of power. In that oath he undertakes that he will "to the best of his ability preserve, protect, and defend the Constitution of the United States." The fulfillment of the prediction quickly followed; and during the same session, in the protest of the president, we find him referring to this oath as a source of power and duty. Now, if the president, in virtue of his oath, may interpose and prevent anything from being done contrary to the Constitution, as he understands it, and may, in virtue of the injunction to take care that the laws be faithfully executed, prevent the enforcement of any law contrary to the sense in which he understands it, I would ask what powers remain to any other branch of the government? Are they not all substantially absorbed in the *will* of one man?'

"Mr. Chairman, while I am reading the opinions of the great men of this nation upon the danger of exercising the tremendous power of removal, I will read a part of report made by Mr. Benton, in 1826, in which he said:

"'"The king of England is the fountain of honor;" the president of the United States is the source of patronage. He presides over the entire system of federal appointments, jobs, and contracts. He has power over the "support" of the individuals who administer the system. He makes and unmakes them. He chooses from the circles of his friends and supporters, and may dismiss them; and, upon all the principles of human actions, he will dismiss them as often as they disappoint his expectations. There may be exceptions, but the truth of the general rule is proved by the exception. The intended check and control of the Senate, without new constitutional or statutory provisions, will cease to operate. Patronage will penetrate this body, subdue its capacity of resistance, chain it to the car of power, and enable the president to rule as easily, and much more securely, with than without the nominal check of the Senate. If the president himself was the officer of the people, elected by them and responsible to them, there would be less danger from this concentration of all power in his hands; but it is the business of statesmen to act upon things as they are, and not as they would wish them to be. We must look forward to the time when the public revenue will be doubled; when the civil and military officers of the government will be quadrupled; when its influence over individuals will be multiplied to an indefinite extent; when the nomination of

the president can carry any man through the Senate, and his recommendation can carry any measure through the two Houses of Congress; when the principle of public action will be open and avowed—the president wants my vote, and I want his patronage; I will vote as he wishes, and he will give me the office I wish for. What will this be but the government of one man? And what is the government of one man but a monarchy? Names are nothing. The nature of a thing is in its substance, and the name soon accommodates itself to the substance. Those who make the president must support him. Their political fate becomes identified, and they must stand or fall together. Right or wrong, they must support him,' etc.

"All this was prophecy then—it is now history.

"In the year 1835, Mr. Calhoun took up the subject of executive patronage generally, and submitted to the Senate a measure for its reduction, accompanied by a most elaborate and able report, part of which reads in these words:

"'It is only within the last four years that removals from office have been introduced as a system; and, for the first time, an opportunity has been afforded of testing the tendency of the practice and witnessing the mighty increase which it has given to the force of executive patronage, and the entire and fearful change, in conjunction with other causes, it is effecting in our political system. Nor will it require much reflection to perceive in what manner it contributes to increase so vastly the extent of executive patronage.

"'So long as offices were considered as public trusts, to be conferred on the honest, the faithful, and the capable, for the common good, and not for the benefit or gain of the incumbent or his party, and so long as it was the practice of the government to continue in office those who faithfully performed their duties, its patronage, in point of fact, was limited to the mere power of nominating to accidental vacancies or to newly-created offices, and would, of course, exercise but a moderate influence, either over the body of the community or over the office-holders themselves; but when this practice was reversed—when offices, instead of being considered as public trusts, to be conferred on the deserving, were regarded as the spoils of victory, to be bestowed as rewards for partisan service—it is easy to see that the certain, direct, and inevitable tendency of such a state of things is to convert the entire body of those in office into corrupt and supple instruments of power, and to raise up a host of hungry, greedy, and subservient partisans, ready for every service, however base and corrupt. Were a premium offered for the best means of extending, to the utmost, the power of patronage; to destroy the love of country, and to substitute a spirit of subserviency and man-worship; to encourage vice and to discourage virtue; and, in a word, to prepare for the subversion of liberty and the establishment of a despotism, no scheme more perfect could be devised; and such must be the tendency of the practice, with whatever intention adopted, or to whatever extent pursued."

"Mr. Webster supported the measure of Mr. Calhoun in a speech of great ability, in which he uses these words:

"'I concur with those who think that, looking to the present, and looking also to the future, and regarding all the probabilities of what is before

us, as to the qualities which shall belong to those who may fill the executive chair, it is important to the stability of government and the welfare of the people that there should be a check to the progress of official influence and patronage. The unlimited power to grant office, and to take it away, gives a command over the hopes and fears of a vast multitude of men. It is generally true that he who controls another man's means of living controls his will. Where there are favors to be granted, there are usually enough to solicit for them; and when favors once granted may be withdrawn at pleasure, there is ordinarily little security for personal independence of character. The power of giving office thus, affects the fears of all who are in, and the hopes of all who are out. Those who are out endeavor to distinguish themselves by active political friendship, by warm personal devotion, by clamorous support of men in whose hands is the power of reward; while those who are in, ordinarily take care that others shall not surpass them in such qualities or such conduct as is most likely to secure favor. They resolve not to be outdone in any of the works of partisanship. The consequence of all this is obvious. A competition ensues, not of political labors, not of rough and severe toils for the public good, not of manliness, independence, and public spirit, but of complaisance, of indiscriminate support of executive measures, of pliant subserviency, and gross adulation. All throng and rush together to the altar of man worship; and there they offer sacrifices, and pour out libations till the thick fumes of their incense turn their own heads, and turn, also, the head of him who is the object of their idolatry.

"'Sir, we can not disregard our own experience. We can not shut our eyes to what is around us and upon us. No candid man can deny that a great, a very great change has taken place, within a few years, in the practice of the executive government, which produced a corresponding change in our political condition. No one can deny that office of every kind is now sought with extraordinary avidity, and that the condition well understood to be attached to every office, high or low, is indiscriminate support of executive measures, and implicit obedience to executive will. For these reasons, sir. I am for arresting the further progress of executive patronage, if we can arrest it. I am for staying the further contagion of this plague.'

"I have read, Mr. Chairman, all the authorities I intended to read to the committee upon this branch of the question. I will leave it with one remark more. It is a strong argument against the power now claimed by the governor, that it has never been exercised before—nay, never asserted. It belongs only to the boldness of Governor Owsley to put forward such high claims to power—perhaps the more appropriate expression would be, instead of boldness, the obstinate malignity of Governor Owsley.

"Mr. Chairman, the tenure of the office of secretary of the State of Kentucky has been assimilated to that of secretary of State of the United States. The analogy does not hold good in any one particular, except the mere name. The office of secretary for the State of Kentucky is created by the Constitution of Kentucky. That of the United States, by act of Congress. The duties of secretary of State for Kentucky are pointed out by the Constitution and the laws of Kentucky. The duties of the secretary of State for the United States are those things pointed out to him by the President of

the United States. The secretary of State is to hold his office for four years, if he shall so long behave well. The secretary of the United States is removable at the pleasure of the president. I will dismiss that part of this subject as unworthy of further notice, by reading the act of Congress, which reads in these words:

"'SECTION 1. Be it enacted, etc., that there shall be an executive department, to be denominated the department of foreign affairs [name since changed to department of State], and that there shall be a principal officer therein, to be called the secretary of the department of foreign affairs [since changed to secretary of State], who shall perform and execute such duties as shall, from time to time, be enjoined on or entrusted to him by the President of the United States, agreeable to the Constitution, relative to correspondence, commissions, or instructions, to or with public ministers or consuls, from the United States, or to negotiations with public ministers from foreign States, or princes, or to memorials or other applications from foreign public ministers, or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to the said department; and, furthermore, *that the said principal officer shall conduct the business of said department in such manner as the President of the United States shall, from time to time, order or instruct.*

"'SEC. 2. That there shall be in the said department an inferior officer, to be appointed by the principal officer, and to be employed therein as he shall deem proper, and to be called the chief clerk in the department of foreign affairs; and *who, whenever the said principal officer shall be removed from office by the President of the United States*, or in any other case of vacancy, have the charge and custody of all records, books, and papers appertaining to the said department. 1 Storey's Laws U. S., page 5.'

"Mr. Chairman, there are a few general remarks I wish to make, which come under no regular head. I have signed my name to not less than fifteen thousand State bonds and coupons, for which I never got one cent or asked one cent. It was no part of my duty as secretary. Mr. Harlan got, when secretary, two hundred and fifty dollars for signing State bonds and coupons. When the Legislature, in the session of 1845, called upon Mr. Cates and myself to compile the revenue laws, Mr. Cates copied the laws, for which he got three hundred dollars. I, in obedience to a resolution of the Legislature, digested a revenue system and reported it to each House of the General Assembly in 1846. That cost me much labor. I charged not one cent for it. That was no part of my business as secretary. When I was called upon as one of the arbitrators in the case of the claim of John Tilford, to meet the other arbitrators and settle if we could, I met the other gentlemen. We used every effort we could to settle it, but we could not on account of my disagreement with the other two. The Legislature called on the arbitrators for a report. I made out mine with much labor, and which was approved by a majority of both Houses of the General Assembly. For that I neither got nor charged a cent. I paid out of my own pocket, Charles Morris, for copying the two reports—one in the case of Tilford and the other the system

of revenue—five dollars. I never asked to be reimbursed even that sum. The secretary and some other gentlemen were directed to examine the public library, and report the state of the books, etc. I spent near two weeks in performing that labor, and drew a report—the other gentlemen signed it but never looked at a book. I do not, Mr. Chairman, make these remarks to boast of what I have done, out of my duty as secretary, for nothing; but to repel the imputation of the governor, that I took the office to make money out of it, without rendering services. Such malignant insinuations I throw back in the teeth of the governor with scorn and contempt.

"I have not continued in office for either the honor of holding it or the emoluments of the office. It is no honor for me to hold office under Governor Owsley. I was advised by a lady of this town, the day I entered the office, not to accept. She warned me against it, and pointed out, with the spirit of prophecy, the indignities I would have to submit to and the persecutions I would have to endure. She knew the governor and the Owsley family much better and more intimately than I did. She was like Cassandra, the daughter of Priam, king of ancient Troy. In her advice to me, she had the gift of prophecy; but, yet, like Cassandra, she was not credited.

"I have held the office, seeking a fit opportunity to resign, without appearing to be driven out of it. I spurn Governor Owsley, the office, and salary as I do the dust I tread on. If I could have honorably got clear of the commission, I could in my heart have torn it to pieces, dashed it on the ground, and stamped it under my feet.

"No, Mr. Chairman, I fight this battle singly and alone against the whole power of the administration. I fight for my honor, my character, my reputation, and for the proud feelings of my family, who are, both by blood and marriage, equal to any in America. Thank God, I have now an opportunity to do it before the Senate, the House of Representatives, the crowded assembly, the State, and nation at large. I fight the battle, also, to restore the Constitution of my country—broken and violated by an invasion of my political rights. If the Senate decide that the governor has a right, without cause, to remove me, then I leave the office cheerfully, for I would not hold an office at his will and pleasure. If the Senate decides this question in my favor, it will put it in my power to resign, which I will do. So, in either event, I get clear of this miserable office. I would not continue to hold office under Governor Owsley. His name shall not be on a paper to contaminate my pocket. To stay in the secretary's office the residue of his time, and be associated with him and his minions is more than I can endure. If I am to die, I had rather be thrown into the lion's den and torn to pieces, than be stung to death by gnats, mosquitoes, and yellow-jackets.

"Mr. Mitchell said, in his evidence, that I opposed some of the governor's nominations and measures. If he means that I opposed his nominations after they were made, I deny it. As to his measures, I said but little

about them. I saw no system in his measures, but to hunt offices and employment for his relations. I know what Mr. Mitchell alludes to—the report, I suppose, I had the honor, in obedience to a resolution of both Houses, to make to the Legislature last session. In that report I recommended the abolition of the office of first auditor. His salary is twelve hundred and fifty dollars a year; the office expenses about three hundred dollars a year; making fifteen hundred and fifty dollars. And, also, the abolition of the clerk's office to the commissioners of the sinking fund. The clerk's salary is five hundred dollars a year, and office expenses about fifty dollars a year. The two offices cost the State now about twenty-one hundred dollars. Throw the business of those two offices into the second auditor's office. It would require but an additional clerk, at a salary of five hundred dollars. By the measure I recommended, the State would save sixteen hundred dollars a year, and the fiscal and financial concerns and business of the State much simplified. It is plain why the measure was not acceptable to the governor. It touched the salary of Mr. Bodley and the 'duke,' two members of the governor's family. There is very little business to do in the first auditor's office, and the clerk of the commissioners of the sinking fund, I do not believe, has more than one hour's work a week upon an average. It mattered not how wise the measure of abolishing those two useless offices; yet it would not be relished by the governor, because his family would feel it.

"I saw from the governor's message a proposition to abolish the board of internal improvement. I knew that would injure the whole system. The message said Governor Metcalfe wanted to resign. I solicited him not to resign. He said his situation was an uneasy one. I thought he alluded to some persons finding fault with him. However, he promised me not to resign, and has not done it. I will ask you, Mr. Chairman, when I was called on by the Legislature for a system of revenue, if that did not embrace retrenchment, as well as taxation, and if I would not have been faithless to the high trust reposed in me by the Legislature if I had shrunk from the performance of that duty, for fear of offending the governor, the 'duke,' and his father-in-law, Mr. Bodley?

"I will ask Governor Owsley if he did not, this winter four years ago, as I have stated, promise me, if elected governor, he would not know the politics of any applicant for office, and if qualification alone would not be the test? I will demand of him, when you twice appointed a judge for the upper district, could you find no lawyer there? and if you could, was it not your duty to select a judge who lived in that district? I will answer those questions for the governor. You could have found eminent lawyers, residents in that district; and if you could, you should have appointed one of them. But the governor has a further answer, which he will give himself—they were Democrats, and voted for Butler. When officers were appointed to command our volunteers, last summer, could you

not, governor, have found a Democrat qualified to fill some office as high as a colonel or major? You will answer no. I say you could have found many who, in the language of Lord Byron, 'are valorous and sage.' The governor can not find one fit for Commonwealth's Attorney. All the pledges I made for the governor, when a candidate—and I made them by his authority, in a hundred speeches—are to remain unredeemed.

"I have, Mr. Chairman, frequently contemplated the vanities of this vain world—its pomp and show. I have imagined to myself the proud emperor of all the Russias; how proud and arrogant he was; yet not more so than a little petty constable strutting about with his saddle-bags on his arm. I have imagined to myself Bonaparte, the day after a celebrated battle—such as Austerlitz, Jena, and Friedland—reviewing his mighty army and distributing honors on the battlefield. Then I have looked upon Governor Owsley in the after part of the day, when His Grace would put on his table a *Tribune*, with the articles marked that praised and extolled him to the sky, all made up to order in the secretary's office by the 'duke,' and sent to Danville for publication. I have seen him read them and smile, and smile and read again and again. At last, toward night, he would rise from his chair, fold his cloak around himself, and step out of the office. His Grace would follow him and soon overtake him, get a foot or two in advance, look around and up in his face, uttering, I have no doubt, about these words, or something like them: 'You are a distinguished Whig; the breath of thy nostrils consumeth thy enemies like a devouring flame a dry stubble.' The governor's steps would be measured, 'like a wounded snake as it drags its slow length along.' They would prolong the walk to the palace as much as possible, that the common people, the vulgar crowd, might gaze at them, and say to themselves, 'But behold the wonderful men!' How near are the ridiculous and sublime to each other! But behold Bonaparte and his proud marshals prancing over the bloody fields of battle. Then look on Governor Owsley, when going from the secretary's office to the palace, and his little ill-shaped Grace, the Duke of Buckingham, by his side. How great is the folly of man!

"Mr. Chairman, I have a few more remarks to make, and then, for the present, I shall say no more until I hear from Mr. Kinkead. I have been a Whig according to the common acceptation of the term, and still firmly believe in the great principle that the labor of America must be protected from the pauper labor of starving Europe. I have served the Whig party for eighteen years. I lack only two years to make the number Jacob served Laban. I have fought the Whig battles everywhere—in the Senate of this State, in Congress, and all over this State—as you all know. Whenever the Whig drum tapped to fall into ranks I was there. In calling the roll, when my name was called, I answered, here am I, ready to do your bidding, as far as a gentleman can do. If the Whigs said, ride over the State and speak

to the people, that they may hear our principles discussed, become converts, and be of our party, I did so; and never hesitated one moment. Now, behold! what is my reward? A man who professed to be a Whig governor is persecuting me and speaking evil of me, most unjustly. He never did the Whig party good, but much evil; and, as St. Paul said of Alexander, the coppersmith, 'may the Lord reward him according to his works.' He has been a vile and putrefying sore on the Whigs; but next August come a year he will scab off from the Whig party, and that will be an end of him. His political sun will then set—never more again to rise. In the midst of all my troubles and difficulties, I appeal to the generosity and magnanimity of the Democratic party, to come to the rescue and show me fair play. That is all I want. I know the Democrats have no personal prejudices against me. In all our political conflicts, I have treated them as noble, virtuous, high-minded, and honorable men—zealous and true-hearted—and well they deserved such treatment. In that way all great parties ought to treat each other. They are the same people—have the same interest and pursuing the same object—the welfare and happiness of the people, and only differ as to the best mode to obtain them.

"I do not make the present remarks to ingratiate myself with Democrats to answer my present purpose. I have uttered the same sentiments upon a great many occasions heretofore. I have, in our conflicts, fought them fair, and so have they fought me. Foot to foot and eye to eye opposed. We have dealt each in the war of words many hard blows—all for the good of our respective parties, and not out of malice. I have never scrupled to do the Democratic party justice. I have not found fault, as some Whigs have done, with the administration for the present war. In the management of that war much praise, I think, is due the administration. The question was fairly put to the American people in the presidential election, between Mr. Polk and Mr. Clay, whether Texas should be annexed or not? I was in that election, as all Kentucky knows, for Mr. Clay and against annexation. I said in my speeches on that occasion, every time I addressed the people, if we annexed Texas to the United States, we annexed Texas with the limits and boundaries as the Texan Congress claimed—that is, to the Rio Grande; and that it amounted to a pledge of national faith to contend for it as Texas claimed to hold. The people of the United States elected Mr. Polk. That election was decisive of the question. Congress knew what the public will was, and in obedience to that—upon the true principles of a republic, that the will of the people should govern—passed the act annexing Texas. What was Mr. Polk bound to do? He knew the will of the people and Congress. He was bound to obey their will. How could that be done? In no other way than to take possession of the country. That possession could only be taken by a military force, and he was bound to use the necessary force. These opinions I expressed last summer was a year ago, when I told the only son I had

left alive, if he wanted to see war and know it, and for the war to know him, now was the time to join the army. That Mr. Polk was obliged to send our army to the Rio Grande, and then the Mexicans would fight or cease to be a nation. My son commenced his preparations in August, 1845; left in September of that year, and there he has been ever since.

"We are not to forget, Mr. Chairman, that a republic never has a large army in time of peace. It is a government of the people's own choice, and a large army is not required to compel obedience to the laws. All other governments are governments of the few, controlling and oppressing the many. Such governments require a large army in times of peace. The regular army of Russia amounts to about one million of men; Austria, four hundred thousand; Prussia, two hundred and fifty thousand; France, four hundred thousand, and Great Britain at least two hundred and fifty thousand. When these governments choose to go to war, they are ready in a moment.

"A republic, such as the United States, when she goes to war, as we did in the late war with Great Britain, our army has to be made and created after the war commences. But when another nation goes to war with us, as Mexico did, we can make no preparation until the commencement of the war. The very form of our government forbids. The first gun that was fired, the first blood that was shed in this war, was war itself. That was the act of Mexico. There was no alternative left for the administration but to fight, and create an army at the same time.

"Last May, the war commenced, near the mouth of the Rio Grande—three thousand miles from the seat of our government. This is now the 13th of January—about eight months. What has the administration done since then, up to this time? The acts of the administration challenge our praise. They display vigor, activity, and energy in the execution of the plans of the government, which plans are formed with judgment and good sense. I mean common sense, as contradistinguished from learned book sense.

"To prove the truth of what I have said, let us take a brief and rapid survey of the operations of the war, and what has been achieved. We have sent part of our army into Upper California, a distance by land of four thousand miles; another party went by water, a distance of twelve thousand miles. We have conquered and now got possession of that country—a country that will measure at least four hundred and fifty thousand square miles. Another part of our army has been sent through a desert wilderness one thousand miles. That part has conquered New Mexico. We now possess it. We have conquered all the disputed country east of the Rio Grande—not less than one hundred and fifty thousand square miles. The extent of our conquest on the west side of the Rio Grande, from all the information I can obtain, can not be less than two hundred thousand square miles.

One-half of the whole of Mexico is conquered and now possessed by the troops of the United States. Three desperate battles have been fought and splendid victories achieved. One of them has no parallel in the annals of either ancient or modern history. All this has been done and an army created, within the short space of eight months. There is no blame since the presidential election. All has been done since then in obedience to the public will—and well done. I am not for refusing either men or money to the administration; but I will, with my feeble voice, encourage them to prosecute the war with all our power, until we conquer peace in the city of Mexico itself; for there it must be conquered. The American character must not suffer now in the eyes of the world, by withdrawing to the east side of the Rio Grande, and adopting a defensive war. The march of our armies must be onward, or the moral power given to our troops by the three great victories gained, will be lost.

"The opposition to the war says it will cost us blood and treasure. Be it so. When we are insulted and attacked, are we not to fight? Shall we permit the honor of the United States to be tarnished because it may cost us blood and money? I answer, no. What is fifty millions compared with the renown we have won? Nothing.

"Blood has been shed I know. Our officers and men have been prodigal of their lives; but we have, and their relations have, the melancholy consolation to know that they died in a blaze of fire upon the fields of their glory. What did the last war with Great Britain cost the United States? Heavy expenses and disbursements were made during the war. Our funded public debt increased from about thirty-nine millions to one hundred and twenty-three millions, besides a floating debt, not funded, of near fifty millions. It may be asked, what did we gain equal to the money expended and blood shed? I answer, we gained a great deal. We told to our own people we would not be insulted. We told the same to the nations of this earth. We assured our own people that they could fight well and courageously upon the ocean and the land. The same great tale we told to the crowned heads of Europe. And, above all things, we informed the world that we could fight through a bloody and tremendous war with the most powerful nation on earth, and when it was over, return to a peace establishment again, which gave the lie to the predictions of the kings of Europe.

"What has Kentucky gained by this war? She has added honors to her great reputation, heretofore won in many a bloody field, where heroes fought and contended—man with man—as we had to do in our desperate conflicts with the Indians. Kentucky is a noble State—famed for valor, without boasting—famed for courage, without rashness or temerity. Her sons are always ready for the fight, and rush to the field of battle, where they never falter in the hour of danger, but can look death in the face without turning pale. Major Barbour, who bravely dared and nobly died at Monterey, was a Ken-

tuckian; so is McClung; so is Butler; so is Taylor. The reputation of Kentucky for orators in Congress and heroes in battle is known to the world. Her glory is seen by the people of this whole earth—bright shining as the sun; but unlike the sun, Kentucky's renown and glory have no night.

"I am not one of those, when my friend or nation is fighting, to coolly look on, and then stop to inquire who is in the right, when the battle is raging and blood is pouring out at every pore. No, sir; I will see the war over first, and then, perhaps, I may inquire. I will never quench the fiery courage of my friends or my nation by saying you or we are in the wrong in this affair. No; I will shout or hurrah for him or them, and to nerve the arm that is doing battle, declare he or we are in the right, and even if the oath is not warranted by the fact, as Sterne said with Uncle Toby, when he swore, the accusing angel will shed a tear in the book and blot it out forever.

"Mr. Chairman, I regret that I have digressed so far from the subject before the committee. I have a word or two more to say, and then I have done.

"I appeal to my Whig friends and associates to resist the power and influence of the administration. Do not give me up as the cowardly judges gave up Admiral Byng, in the reign of George II., to satisfy the clamor of a weak and feeble administration; or, as the judges did Socrates, in Athens; or, as Pilate did our Saviour, to appease the clamor of the Jews. Show more moral firmness—more courage. Let Governor Owsley, and his little, contemptible party, clamor as much as they choose. I trust, and confidently hope, that both Whigs and Democrats will unite now, for the first time for years, and save me, and rescue my character from this most groundless, oppressive, and cruel persecution. I pray that the God of Meshach, Shadrach, and Abednego, who walked with them in the fiery furnace, and would not let a hair of their heads be singed, will now walk with me—for He is my God, also—and, in passing over this fiery ordeal, will not let the soles of my feet be scorched, or one of my old grey hairs be singed.

"Mr. Chairman, I have been so worried and worn out by the persecutions of Governor Owsley, and his minions who flutter around him, that my feelings are so desperate and reckless that, like Logan, the Indian chief, I would not turn on my heel to save my life."

The following is the answer of Mr. Hardin, addressed to the committee on executive affairs, on the 16th of January, 1847, in the Representatives' chamber, to a speech made by GEORGE B. KINKEAD, on the 14th and 15th of January, 1847, before the same committee, upon the subject of the nomination of George B. Kinkead to be secretary of State, and the memorial of Mr. Hardin claiming the same office.

"Mr. Chairman: Before I reply to Mr. Kinkead, I beg the permission of the committee to state that the *Morning Courier*, published at Louisville,

on the 8th of last September, has been sent here, through the post-office, and laid on the tables of the senators and representatives, since I closed my opening speech, that contains an article filled with abuse and scurrility of myself. How it came into the post-office, I can not tell, or who sent it. I know such a number of copies of that paper have been kept prepared for the present trial, and the time selected to lay them on the tables of the members of the Legislature, to suit exactly the crisis of the trial we are now at. My speech was ended, and then, to take me by surprise, and prevent an answer to the infamous falsehoods contained in that paper, was the object to be attained. The piece in the Danville *Tribune* was written by Mr. Mitchell the day the governor attempted to remove me—by the governor's advice and directions, I have no doubt—sent to Danville, and there published, came back here—then the vile libel attached to it, as a commentary on it by Mr. Mitchell and the governor, and sent to the *Courier* at Louisville for publication; then some two hundred copies of the paper procured by the same individuals, and kept until now, to be laid on the tables of the members. The only part of the article I allude to and shall notice is, that my friends, with my privity and consent, bargained with the friends of Governor Owsley, that if the governor would discontinue his contemplated movement against me in the Senate, last session, that, at the end of the session, I would resign. I have stated, and now repeat it, that the statement is utterly false, from beginning to end. I will further remark that such falsehoods as are contained in the article in the *Courier*, to which I have referred, are only a small part of what I have endured from Mr. Mitchell and the governor, for about one year and a half; and, not content with abusing me, since this trial commenced, have assailed some of the members of this committee, to deter them from doing me justice and giving me a fair trial. I have no fears on that score.

"Mr. Kinkead must have misunderstood me as to what I said about Governor Metcalfe complaining that Governor Owsley assailed him in his management of the board of internal improvement. I did not intend to convey any such idea. It was this: that some of the people (of Frankfort, I supposed), were finding fault with him. I did not intimate that it was Governor Owsley nor did I say so in my first speech. I consider Governor Metcalfe a first-rate man at all points, and if a better has ever lived since the days of the Apostles, I have never read of him or seen him.

"Mr. Kinkead has also misunderstood me in reference to what I said about what passed at Colonel Davidson's dinner-table last winter. The conversation, in its character, had no appearance on the part of Judge Robertson to be a tale-bearer or mischief-maker. It was casual and entirely accidental. It did, in fact, though, prevent me from resigning at the end of the last session, as I have already stated, and thereby prevented my enemies from ruining me, by publishing that I had bought off the prosecution from

the fear of being convicted—and the price given was my resignation. Although such a slander would have been groundless, yet my resignation would have been conclusive proof of the fact. Judge Robertson has rendered me great service by the accidental remark, and I am under obligations to him for it.

"Mr. Kinkead has thought it necessary to pronounce a high enconium on Governor Owsley—such as able jurist, a great man, a distinguished politician, and able statesman, etc. That Judge Owsley is a good case lawyer, I readily admit. That he knows the great and fundamental principles of the law as a political science the most partial of his friends have never said that of him before. But, as Mr. Kinkead is the secretary *de facto* of Governor Owsley, and they both hold to the doctrine that his secretary is to do his bidding, I suppose that Governor Owsley directed him to say so, and it may go for what it is worth. That he has ever rendered any essential services to the party to which he belonged, I deny. When the war raged between the Old Court party and the New Court party, while we were all spending our time and money, he sat still, drew his salary, and did nothing, either as judge or politician. Since the great parties of Whig and Democrat have been warring with each other, what has he done to aid the Whigs? Nothing. From the time he resigned his office as judge of the Court of Appeals, which was about 1828, he practiced law until he was nominated as the Whig candidate for governor. Before that time did he ever make a speech or spend a dime in the Whig cause? If he did, no man has ever heard of it. He stayed in his law office like a boy in snowy weather watching his bird-trap, with most marked attention and assiduity, and while the other Whig lawyers were spending their time and money in the Whig cause, he caught much game in his trap—and well he took care of it. His great Whig services are all empty boastings—no reality in them.

"Mr. Kinkead complained that I had, in an unwarrantable manner, assailed Mr. Mitchell. I have not said of him half what he richly deserved, and only said those things which my defense required me, and which his evidence and conduct in this whole transaction demanded of me. He has been the principal manager in this business from beginning to end. He has endeavored to betray me and injure me all he could, although I gave him so fine an office without knowing him. At the end of Governor Owsley's time, when he would know he could get no further favors from him, he would betray him for thirty pieces of silver. Mr. Kinkead says Mr. Mitchell will work his way in the world. I do not want his ways to interfere with me any more, as he has heretofore done; for I impute a large part of my troubles to him. As I said when I first addressed the committee, he studied evil more than good. Does Mr. Kinkead expect that I am to stand abuse from Governor Owsley and Mr. Mitchell, in the *Tribune*, *Courier*, and Richmond *Chronicle*, and in all their conversations, and, finally, in the governor's

message to the Senate, and fold my arms before me like a slave, and say nothing? If he expects that, he is mistaken. I will defend myself, and self-defense requires me to invade the country of my enemies, like the government of the United States is doing in the present war.

"Mr. Kinkead says Mr. Mitchell has just married a fine and accomplished young lady, the daughter of Harry I. Bodley. I do not doubt the fact. I will accord to her all the praise Mr. Kinkead has bestowed on her. But, Mr. Chairman, considering the original vocation of Mr. Mitchell, I have done a great deal for him—first made him a clerk, with a salary and fees worth eight hundred and sixty-six dollars a year, and at parting with him, as a reward for his fidelity to me, and faithful services, I have issued him a patent of nobility; I have made him the Duke of Buckingham! His lady partakes of his elevation, and shares with him his illustrious title with all its fresh and blooming honors. But I suppose Mr. Kinkead thinks I have no family, no kindred, to suffer by my abasement, if the 'duke' and Governor Owsley succeed against me. Those men have injured me much, already. When I parted with my family for this place, the Sunday after Christmas, I have no doubt they would have experienced less heartfelt anguish, if they had seen me start for Mexico, not to return until the war was ended; because, if I returned, I would return with honor. But when I started here they knew, vanquished or victorious, I would be disgraced by a conquest with Mr. Mitchell and the governor. Ajax, when contending with Ulysses for the armor of Achilles, before the Grecian generals, said if he won the armor he was still disgraced by the contest with Ulysses.

"Mr. Chairman, Mr. Kinkead has been, since the commencement of the investigation of this cause, until this moment, in the daily—nay, hourly—communication with Governor Owsley. I consider the defense made in the circuit court to my motion for a mandamus, the defense of Governor Owsley. The defense here is the governor's defense. I shall so consider it, and hold him responsible for all the doctrines advanced by Mr. Kinkead.

"The second Monday in October last I moved the judge of the Franklin Circuit Court for a mandamus to the second auditor of public accounts to compel him to issue me a warrant on the public treasurer for my quarter's salary. He offered me a warrant for all the time but twenty nine days. I refused to take the warrant in that way. I wanted to try the question whether the governor has the power to remove me as secretary. The rule was made *nisi*, returnable next morning. The auditor made his return; he admitted he had refused to issue the warrant for the last twenty-nine days of the quarter, and assigned as a reason that the governor had officially notified him he had removed me from office. I pressed the court to take up the motion upon Tuesday. The attorney-general, after consulting the governor, I presume, asked until Wednesday. On that day I urged a hearing. Mr. Kinkead asked until Friday. The attorney-general said he could not be here on that

day, nor, I think he said, on the Saturday after. The court put it off until the third Monday in October, 1846. I was compelled to leave Frankfort on the Saturday before for Lebanon. The circuit court of Marion county was in session there, and I was, on account of my business in that court, compelled to leave Frankfort. I employed Messrs. Harlan and Stevenson to plead my cause for a mandamus upon the auditor to issue me the warrant, which they did with great zeal and ability, and with their efforts on that occasion I am much pleased. Their arguments are published and from their published speeches I collect the history of the cause in the Franklin Circuit Court after I left Frankfort. Governor Owsley, by the attorney-general, objected first to the jurisdiction of the court; in the next place, the court could not go behind the entry on the executive journal, and inquire whether the governor had a right to remove me or not; nor could the court inquire into the truth or falsehood of the charges made against me by the governor in his order of removal; that the question into the truth of the charges he preferred against me could alone be tried by the Senate. No part of my proof was heard before the court. The only questions argued were the preliminary points I have stated. The questions read in these words:

"'*First:* Whether there may be such a failure, refusal, and willful neglect to reside at the seat of government and perform the duties of secretary of State, as to constitute an abandonment of the office, and consequently a vacancy in said office? And, if so,

"'*Second:* Whether the court can inquire whether such case has happened, or whether it must be decided exclusively by the governor and the Senate.'

"The argument closed on Friday evening. The court has the cause yet under advisement.

"The governor has brought me here and has exhibited a long catalogue of charges and specifications against me. What does he now say? That I can not go into the truth or falsehood of his charges against me in the Senate. It is a question alone for the courts of justice. That the Senate can not settle the question. What a deplorable condition am I in. If I go to the courts, then he says the courts have no jurisdiction; it is the Senate. If I meet him in the Senate, then, says the governor, the Senate has no jurisdiction; it is the courts. I pursue justice and my rights to the courts; I can not get it there. I then fly to the Senate; if it is denied me there, then I can say my great rights are taken from me, and that the Constitution and the laws of my country afford me no redress. If my great, valuable, and unalienable rights are thus taken from me, and no tribunal of my country can try my cause, then I will appeal to a generous and magnanimous public to come to the rescue. The governor has so much of the quibbling, technical lawyer in him, that when he dies and is arraigned at the bar of heaven, for the deeds done in this world, by the accusing angel, in the name of William Owsley,

that his vanity and fondnes for his titled dignity of governor and his habit of a special pleader, will induce him to plead in abatement a misnomer, and say that he is not William Owsley, but Governor Owsley; that since August, 1844, by all his acquaintances, neighbors, and especially in his own family, he has been called and known by no other name than Governor Owsley. That plea will be overruled; there are no titles in heaven. Governor Owsley and the other proud kings of this earth must come down as low as the beggar in the streets. The governor will still continue to quibble and plead to the jurisdiction, which plea will be overruled; for the governor will be afraid to set out in his plea the court that has jurisdiction, lest Radamanthus may be compelled to take jurisdiction of his cause by a mandamus from the superior to the inferior courts that decide on the souls of the dead. So here, upon this earth, I can not get the governor to a fair trial; one quibble after another, one technicality is played off after another. Gentlemen of the committee, I implore you, make the governor come up and fight fair. Say to him, are your charges against your constitutional secretary true or false; and have you the power to dismiss him or not?

"Mr. Kinkead's argument, or, rather, the argument of Governor Owsley, is resolvable into two points: first, he says the Senate can not go behind the message of the governor and inquire whether there is such office or not; and whether there is a vacancy or not. Secondly, that the governor has the power to decide on an abandonment of the office by the officer; and, also, to decide whether or not the officer has not forfeited and vacated his office for non-user or abuser; and that the Senate can not inquire into anything but the mere qualifications of the nominee; and, in that inquiry, the Senate can not go into the rights of the nominee to hold the office; but his qualifications alone to do the business of the office. I will discuss these questions in the order in which they are stated, and will avoid, as much as possible, the repetition of what I said to you in my speech when I opened this cause.

"Mr. Kinkead, in support of the first proposition, says the government is divided into three departments, to-wit: legislative, executive, and judicial; and that no department has a right to interfere with either of the other departments. As a general principle this is true; but to what department does Mr. Kinkead assign the Senate? To each of the departments some duties are assigned that belong to another. The courts belong to the judicial; yet the judges perform executive acts—such as the appointment of clerks. The governor belongs to the executive; yet he has legislative functions to perform, in approving and signing acts of the General Assembly. The House of Representatives belongs properly to the legislative department; yet the House is appointed manager to conduct impeachments. The duties of the managers are entirely executive.

"The Senate does not belong exclusively to any one of the departments. In participating in the making of laws, the Senate is legislative in its func-

tions. In the trial of impeachments, it is judicial. When sitting as a court of impeachment, the Senators take an oath as judges. When the Senate is thus organized, it is the highest judicial tribunal known to the Constitution. When co-operating with the governor, in exercising the appointing power, the Senate is then in the executive department. I will read to you, gentlemen, that part of the Constitution which confers on the Senate executive functions on the subject of nominations. It is the ninth section of the third article, and reads in these words:

"'SECTION 9. He shall nominate, and by and with the advice and consent of the Senate, appoint all officers whose offices are established by this Constitution, or shall be established by law, and whose appointments are not herein otherwise provided for; *provided*, that no person shall be so appointed to an office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties from which it shall have been taken; *provided*, *also*, that the county courts shall be authorized by law to appoint inspectors, collectors, and their deputies, surveyors of the highways, constables, jailers, and such other inferior officers, whose jurisdiction may be confined within the limits of a county.'

"The committee will perceive, upon the subject of appointments, the Senate has executive powers. When a nomination is made by the governor to the Senate, the first inquiry for that body to make, is there such an office known to the Constitution and laws of Kentucky; and if there be no such an office, to let the governor know it by an appropriate resolution. The next inquiry the Senate has to make, is, if there be such an office, is it vacant; and, in the next place, is the nominee qualified to take and hold the office; and, also, is he qualified to perform the duties that appertain to it?

"What an absurdity would the government be involved in if the governor were to nominate a minister to France. According to Governor Owsley's doctrine the Senate can make no inquiry whether Kentucky can send a minister to a foreign power. The governor alone is to decide on that. The only inquiry the Senate can make is, is the nominee qualified to fill the place. The Senate decides the nominee is qualified, and so the matter is to end; for no minister could go from Kentucky to France. Suppose the governor should nominate the 'duke' as grand chamberlain to the palace, and some other minions as grand huntsman and grand falconer. The Senate can make no inquiry into the question of whether there be such offices or not. The only question, in the governor's opinion, would be their fitness for the office. The Senate would be compelled, in one moment, considering the governor and his nominees to say that they were all qualified. Suppose the governor chooses to nominate a man as constable, or a clerk of the court, although these appointments are to be made by their respective courts, yet the Senate could not inquire into the facts. These supposed cases are but a small part

of the absurdities that the Senate would be compelled to enact if the governor is correct in his doctrine—that is, that his nominations are conclusive; that there is such an office as he nominates the man to fill, and that he alone is the judge whether there is or not. Take the governor's positions to be true, to the extent he contends for, then let us inquire, what would be the result were he to nominate a man in the place of Chief-Justice Ewing, and allege, in the nomination, that Judge Ewing died on a named day; that while the nomination was in the Senate, and before it was acted on, Judge Ewing would learn what was going on in the Senate, and come to Frankfort —stand at the bar of the Senate, and aver he was not dead. Yet the Senate is to act upon the fact. He is dead, because the governor has said so in his nomination. Mr. Kinkead said that was so plain a case it forms an exception to the rule laid down by him for the governor. To look at Judge Ewing and see he was alive, would be going behind the nomination; and the only dif ference between that and his not coming to Frankfort and staying at home, on account of sickness, would be, that in one case the fact would be ascertained by the senators themselves, and the other would be ascertained by witnesses of undoubted credit. The principle is exactly the same.

"Suppose the governor wanted to get clear of a judge, or wanted his place for an Owsley, Mitchell, Kinkead, or a Bodley—and should nominate his successor, and allege that he had resigned, moved out of the State, or accepted an incompatible office; if the Senate could not inquire into the fact, whether the office was vacant or not, we would have two officers when there would be but one office, and the Constitution allowed of one office. Can not any man see, from such monstrous doctrine, the difficulties and absurdities in which the State government would be involved? We would become a subject of ridicule among the other States, and all the sensible men everywhere would laugh at us. The Senate has the same power to inquire into all facts connected with the subject of the nomination that the governor has. Each of the appointing powers, to-wit: the governor and Senate, is to inquire into all the facts connected with the appointment. There is no fact that the governor can inquire into, that the Senate can not. I understand Mr. Kinkead to say, in answer to a question put to him by Mr. Butler, one of the committee, that the Senate can not inquire whether the nominee was an alien or not, although, as an alien, he could not hold the office until naturalized. It is certainly not necessary to give any answer to such doctrine. It is so unsustainable that no man will require it to be answered.

"Governor Desha nominated Arthur L. Campbell to be surveyor in the place of Colonel Anderson, deceased, for the military lands west of the Tennessee. The Senate decided there was no such office; that the counties of Hickman, Graves, Calloway, and McCracken had, each, a county surveyor; that Colonel Anderson never filled an office; that he was surveyor of that district of country by private contract with the board of officers. That deci-

sion went behind the nomination. The Senate did not advise and consent to the nomination of Campbell, although he was well qualified to fill the office, if there had been such a one.

"Again: Governor Desha nominated Preston S. Loughborough to be adjutant-general, in the place of Oliver G. Waggener, removed to Tennessee. The Senate inquired into the fact, whether Waggener had moved to Tennessee or not. Upon a full investigation of the facts, the Senate decided that Waggener had not moved, and that he was yet in office, and rejected the nomination of Mr. Loughborough.

"In 1833, Governor Breathitt nominated a Mr. Bruce to be Commonwealth's attorney, and in the nomination the governor stated that Mr. Fox's commission had expired. A committee was appointed to investigate the case. Fox alleged his commission had not expired. The committee made a report that there was no vacancy. The report was confirmed by the Senate. Governor Owsley was then a senator, and voted for the report. Governor Owsley then voted that the Senate could go behind the nomination. The Court of Appeals, in 1st Dana, in a case between Fox and Bruce, confirmed what the Senate did. I will read you, gentlemen, from the Senate journal, 1832, page 400–1–2, the report and vote of the Senate; it reads in these words:

"'Mr. Hardin, from the committee to whom was referred the nominations for attorney-general and Commonwealth's attorneys, made the following report, in part, viz:

"'The select committee to whom was referred the nomination of the attorney-general and district attorneys, has had the same under consideration, and report, in part, viz:

"'As to the attorney-general, the Senate do advise and consent to the appointment of Charles S. Morehead, to be attorney-general for this Commonwealth.

"'The Senate do advise and consent to the appointment of William B. Booker, to be attorney for the Commonwealth, in the ninth judicial district, in the place of James Harlan, resigned.

"'As it respects the other nominations of district attorneys, except Willis and Holt, the committee, in their inquiries into that subject, find that all the nominees, except Horatio Bruce and James S. Henderson, have been regularly commissioned, by and with the advice and consent of the Senate, Commonwealth's attorneys for the judicial districts respectively for which they are now nominated, and that none of them has resigned. That in the district to which Mr. Bruce is nominated, that Fountain T. Fox was regularly appointed to said office, that he is still alive, has not removed out of the district, or resigned. That in the district to which Mr. Henderson is nominated as Commonwealth's attorney, that Franklin Ballinger, by and with the advice and consent of the Senate, was duly commissioned attorney for the Commonwealth, and that he is still living, has not removed out of the district, or resigned his office.

"'The first question presented for the consideration of the committee is, whether there is a vacancy in the offices above alluded to. And if there be no vacancy, then it is unnecessary to inquire into the qualifications of the nominees.

"'Those Commonwealth's attorneys were appointed under an act of Assembly approved the 23d day of January, 1829, which law has been continued by subsequent enactments, and not permitted to expire, and that the present session again continued, for two years longer, before the preceding law expired. The question is, under these facts, are those attorneys out of office? The ninth article of the Constitution, twelfth section, contains the following provisions: "The attorney-general, and other attorneys of this Commonwealth, who receive a fixed annual salary from the public treasury, judges and clerks of courts, justices of the peace, surveyors of lands, and all commissioned militia officers, shall hold their respective offices during good behavior and the continuance of their respective courts, under exceptions contained in this Constitution." When we examine this section, we will clearly perceive that the word "court" is used as applicable to judges, clerks, etc., and, as to attorneys, the additional words, "and continuance of the office," is fairly to be inferred; that is, such attorneys as their office is created by law, and not by the Constitution, and who receive an annual fixed salary out of the public treasury. An attorney who receives a fixed annual salary out of the public treasury, and who is commissioned by the governor, by and with the advice and consent of the Senate, what is the tenure by which he holds his office, under the above section of the Constitution? The answer is—good behavior, the continuance of the court, and the continuance of the office. Those gentlemen have not misbehaved, the court has been continued, and so has been the office, for it has not been permitted to expire. For, although the law was enacted but for two years, the same power (to-wit, the Legislature), which enacted it for two years, had a right either to permit it to expire or to continue it longer at its will and pleasure, before it did expire; for, where is the substantial difference in creating the office for two years, or four years, or permanently? If the same power that created it continued it, and did not permit it to expire, there is no perceivable difference; because the office continued all the time, and, by the Constitution, if the incumbents behaved well, the court was not abolished, and the office was continued—they were in office.

"'No one will pretend to contend that any legislative enactment made in pursuance of the Constitution, can put any limitations, conditions, or restrictions upon the tenure of office repugnant to the Constitution. It is contended by the governor that the law being for but two years, although the same was continued before the two years expired, that the appointment was thereby limited to two years. With great deference to the high authority for this opinion, it is certainly more plausible than substantial; because the tenure of office, as has been before observed, is fixed by the Constitution, and all laws in contravention of that are void; and even if the commission itself should have improvidently issued for two years, the commission was good and valid, and the limitation void.

"'The committee conceive themselves not only sustained by the Constitution, but by the unanimous opinion of every governor and secretary, except the present governor. When the law first passed in 1813, Shelby was governor, and Martin D. Hardin, secretary; Slaughter was acting governor next, and John Pope his secretary; Adair succeeded him, and Breckinridge his secretary; next Desha, and Barry his secretary; next Metcalfe, and Crittenden his secretary; by each of these governors and their secretaries were the expositions given to the Constitution and the law, which the committee now give. It has been incidentally sanctioned by every court in Kentucky; for

the law creating the office of Commonwealth's attorneys was enacted first in 1813, and continued by regular enactments before the preceding act expired, except in two or three instances, from that time to the present; and when continued before the preceding one expired, no governor ever before considered them out of office, and the courts recognized them as public prosecutors without a new commission; and thus some of the attorneys were continued in office upon the first commission for near ten years. These expositions by former governors, if there were any doubts, ought to be considered as having settled the question. The case of Stonestreet and Harrison, in 5 Littell, and the analogous decisions in Great Britain upon the statute of William and Mary, go to support the opinion of the committee; wherefore,

"'*Resolved*, That in the first judicial district, second, third, fourth, sixth, seventh, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth there is no vacancy.

"'The question being taken on concurring in the said report, it was decided in the affirmative.

"'The yeas and nays being required thereon, by Messrs. Clark and Hardin, were as follows, viz:

"'*Yeas*—Messrs. Beatty, Bibb, Boyd, Churchill, Conner, Cunningham, Fleming, George, Gholson, Griffith, Hardin, Murrell, H. Owsley, W. Owsley, Payne, Taylor, Thompson, Thornton, Wickliffe—19.

"'*Nays*—Messrs. Beaseman, Brown, Clark, Dejarnatt, Dougherty, Guthrie, Harris, James, Murray, Parks, Rodman, Sisk, Wingate, Wood—14.

"I will ask, why did the governor exhibit his charges against me if I were not to be at liberty to contest them? The governor's charges I have disproved, as I had a right to do. Common justice would give me that right; the genius of our government gives me that right. What answer does Mr. Kinkead make to the proof I have introduced, showing all the charges of the governor to be untrue? His answer is, that such proof has nothing more to do with the case than the constitution of Lapland. When I am charged with high crimes and misdemeanors by the governor, in his message to the Senate, I am mocked by the secretary, *de facto*, of the governor, who speaks only what the governor tells him, that although I disprove all he has charged me with, and that his accusations are false and malicious, yet such proof has nothing more to do with the case than the constitution of Lapland. I was, by Mr. Kinkead, tantalized with that expression four or five times. Does the governor know where Lapland is? Does he know it is a cold, bleak country north of Sweden? That it is the region of eternal snow, and in which the people are dwarfs—have no government—live on the seals they can take? Some naturalists suppose the monkeys and baboons of Africa, and some the ourang-outang of the Island of Borneo, and some the Laplanders, the great connecting link between man and beast. The governor, I suppose, thought that Lapland was some great island in the South Sea, or some great and populous kingdom on the east coast of Africa, between the mouth of the Red Sea and the Cape of Good Hope.

"The whole of Governor Owsley's high-toned doctrine about abandonment, and his right and power to declare a vacancy, I have spoken of before.

I will, however, remark that his doctrine of abandonment and declaring a vacancy repeals the clause of the Constitution that prescribes the trial by impeachment, and renders it a dead letter; because the governor's new doctrine dispenses with the whole of it. If he can declare what he pleases a vacation of office, or an abandonment, then there is nothing to try. I ask the committee to simplify the two positions of the governor, that the Senate can not dispute his word when he says there is an office, or that an office is vacant, and that he can declare a vacancy at his will and pleasure, and none can gainsay it if he says so. It amounts then, to this, that he has the whole government in his hands, and that he has more power than the king of France or queen of Great Britain. His pretensions are so extravagant as to render them harmless and ridiculous.

"Mr. Kinkead has told you, over and over again, do as you will, the governor will disregard what you may do. I do not intend to hold the office if you decide in my favor, and he knows it; hence the blustering, boasting language of the governor. Were I disposed to push matters to extremities, and the Legislature to use the power given to that body by the Constitution, the governor's knees would smite together, like Belshazzar's, before the end of the session. The king of France dare not say to his Chamber of Deputies, 'say what you please, do as you will, I will disregard it.' What king of Great Britain, since the abdication of James II., dare hold such language to his Parliament as Mr. Kinkead, who represents Governor Owsley, said to you, gentlemen, in his argument; and he has repeated it several times. The kings or queens of Great Britain, since the revolution in 1688, when the public voice says, dismiss your majesty's ministers, they are instantly dismissed; even Wellington, if a minister, has to go out of office if public sentiment says so. That proud nobleman, who has been victor in a hundred desperate fields of battle, and who conquered Bonaparte at Waterloo, has to submit to public sentiment. When the House of Commons voted Lord Melville guilty of a misdemeanor in the office of Paymaster-General, George III. instantly dismissed him from all his employments, although he thought, and so did his prime minister, Mr. Pitt, that he was innocent; notwithstanding the opinion of the king and his minister, yet the king declared that the will of the nation, as expressed, must be obeyed.

"Governor Owsley's menaces of bullying the Legislature, are just about as ridiculous as if the minister of Hesse Homburg, at some Congress of the ministers of Russia, Prussia, Austria, France, and Great Britain, with all imaginable pomp and self-consequence, was to rise up and protest against some measure of great policy these mighty powers were about to adopt, and swear, if they did not resist, that his master would brush their empires and kingdoms from the face of the earth.

"Mr. Kinkead has indulged in a number of arguments, such as Governor Owsley's supposed cases in his message. There can be no necessity to

respond to extravagant suppositions. Those cases never happened, and no general rule can be established from extreme cases, not that such cases ever did occur, but only supposed. We have had the old rebellion and insurrection cases paraded, like ghosts, to frighten us; and the supposition that I would not attest the official acts of the governor. Not one word of all these imaginary cases is true. Mr. Kinkead, after these wild and extravagant conjectures says, 'is there no remedy for all these?' It is time enough to answer when these things happen. I will suppose that the governor would not approve and sign laws, and refuse to do other official acts; suppose that judges would not act; suppose not an officer in the government would act; the result would be, the government would be dissolved. But we are not to indulge in such idle and ridiculous suppositions. Suppose, again, and that would suit Governor Owsley very well, the people could not govern themselves. Then, I suppose, Governor Owsley would have a right to take possession, and retain the government, upon the ground and pretext that the people were incapable of self-government. That is just the doctrine of Cromwell, and Bonaparte, and all tyrants.

"The political hypothesis of this government is that each public officer, from the highest to the lowest, will do his duty; each one is selected on account of his fitness for the office; his responsibilities are prescribed by the Constitution and law. Those who made the Constitution and laws supposed those responsibilities sufficient to insure a faithful discharge and performance of the duties required of the respective officers. If the responsibilities are found not sufficient, then the Legislature must prescribe more and other penalties. It is not for the governor to take the delinquencies of the officers into his hands, and punish in a new and unheard-of manner. Such doctrine will end in despotism, and the government of one man.

"Mr. Kinkead relied on the opinion of Judge Smith, in the Illinois case, that I have heretofore read. Judge Smith's opinion was not the opinion of the court. Right the opposite was the opinion of the court. But the very opinion of Judge Smith, the dissenting judge, supports me in this case. His whole opinion is based upon one principle, that the Constitution of Illinois does not fix the tenure of the office of secretary of State, neither as to time or good behavior. But if it had, then he gave up the question. He relied on the opinion of the Supreme Court, in support of his position. I read some of the extracts made by Judge Smith (volume II, Scammon's Reports, page 131), and which read in these words:

"'The Constitution is silent with respect to the power of removal from office where the tenure is not fixed. It provides that the judges of the Supreme and inferior courts shall hold their offices during good behavior; but no tenure is fixed for the office of clerks. Congress has, by law, limited the term of certain offices to four years, 3 Story, 1790, but expressly providing that the officers shall within that time be removable at pleasure, which, of course, is without requiring any cause for such removal. The clerks of

courts are not included within this law, and there is no express limitation in the Constitution or laws of Congress, upon the tenure of office.

" ' All offices the tenure of which is not fixed by the Constitution, or limited by law, must be held either during good behavior, or (which is the same thing in contemplation of law) during the life of the incumbent; or must be held at the will and discretion of some department of the government, and subject to removal at pleasure.'

"Mr. Chairman, if, some two hundred years hence, a man of learning, like Hume, Robertson, or Gibbon, were to undertake to write the history of Kentucky, and were to search the archives of State to collect materials to compile his history from, and were he to look over the records of Governor Owsley's administration, he would suppose there were but four great families in Kentucky—the Owsleys, Mitchells, Bodleys, and Kinkeads. There is hardly any office of appointment vacant, that some of them do not obtain it If a judge is to be appointed for the circuit next the Virginia line, a Kinkead gets the appointment, although he does not live nearer the circuit than about one hundred and fifty miles. If commissioners are to be appointed to settle with the Commissioners of the Sinking Fund and president of the Commonwealth's bank, a Bodley and Kinkead get the appointment. If the First Auditor's office becomes vacant, a Bodley gets the appointment. If an assistant secretary is to be appointed, a Mitchell is appointed. If a clerk to the Commissioners of the Sinking Fund is to be made, a Mitchell is appointed. A register is to be appointed, an Owsley gets that—the cousin and son-in-law of the governor. The second clerk in the register's office, a very competent man, with a family, is to be turned out to make room for young Rhodes, the grandson of the governor, who was imported from Danville, and knew nothing of the business of the office. My little office of secretary of State is to be taken from me, to be given to a Kinkead. They are all part and parcel of the same family connection. The register is the son-in-law to the governor, and the second clerk his grandson. Boyle Owsley, the son of the governor, married the sister of Harry I. Bodley and Judge William Bodley, of Vicksburg. Mr. Mitchell is the son-in-law of Harry I. Bodley, and George B. Kinkead is the brother-in-law of Judge Bodley. No man has better studied that text of Scripture, which says, "if a man does not provide for his own household, he is worse than an infidel," than Judge Owsley. The archives of his administration would show that there was one great trial—that of Governor Owsley against Ben Hardin.

"Mr. Chairman, let us for a moment cast our eyes upon Europe, and look at its history for the last fifty years. There we behold how the great rights of the people are sported with, and how they are treated. Now and then we see a few examples of noble resistance. When we look at Russia, there the emperor gives dukedoms, such as Oldenburg, as a marriage portion to his daughter. We look at Austria, there dukedoms, such as Milan,

Modena, and Parma, are given as portions to his children. Let us then cast our eyes on Bonaparte, in all his pride and grandeur, and in the zenith of his power; we behold the same thing enacted by him on a large scale. Kingdoms were given to his brothers and brother-in-law. Westphalia is given to Jerome; Naples to Murat, and Spain to Joseph; but the proud Spaniards would not submit to be thus ignominiously transferred from their lawful king to an upstart stranger. The nations of Europe aided and assisted Spain in the glorious war that broke out, with all its horrors. The war raged in Spain from Cadiz to the Pyrenees; the dark battle-cloud rolled over Austria—then crossed the Niemen. The storm burst like a deluge on the field of Boridino. The next moment Moscow was in flames! The storm of war rolled back, and we saw it hanging over Germany. Shortly after, the cannon was heard at Paris; at last the tragic curtain dropped at Waterloo. The next sight that we beheld was Bonaparte at St. Helena, and there by the evident hand of Providence, he was perched on the crater of an extinguished volcano—a fit emblem of his own fiery career, and then of his fallen greatness and gloomy grandeur. What a moral the Almighty taught the world in the final catastrophe of Bonaparte; what a signal punishment inflicted on inordinate ambition!

"I now tell Governor Owsley, beware how you portion your children and your connections with the offices that belong to the people. They will not tamely submit; they will rouse up in their majesty and assert their power. In monarchies oppressions on the people, when they can bear them no longer, are resisted, and revolutions follow, as the history of most of the governments of Europe proves.

"In republics the remedy is a resort to first principles to purify their government when inordinate abuses creep in. Power is always stealing from the many to the few. The Almighty has told us what to do in such a case by his own example. He sends winds and tides to purify the waters of the sea; he sends winds, rain, and thunderstorms to purify the air. So a convention will purify the foul political atmosphere in Kentucky. That is the remedy, and nothing but that will do. We, gentlemen, who are for a convention ought to rouse up when we look at the high and extravagant claims and pretensions of Governor Owsley, and when we see the public offices taken from more deserving men, and given in marriage portions to the governor's daughter, and grandson, and others of the connection. I am tired of treading these ways—a remedy and that quickly, must be applied.

"Mr. Chairman, I have been very illy able to conduct the argument this evening. Since I last had the honor to address the committee, which was last Wednesday evening, we have heard the most startling news from the seat of war in Mexico. We have heard that Santa Anna, with twenty-five thousand men, is marching on Saltillo, and is about to surround General Worth, who had not more than fifteen hundred men to oppose twenty-five thousand;

that an express has been sent after General Taylor, who was on his march from Monterey to Victoria; that he had countermarched and was moving with all speed to join Worth. When their armies are united the number will not exceed ten thousand men. Since I heard that news, I am restless by day and night, my sleep is only broken slumbers. In that situation I imagine to myself that I can see Taylor and his army rushing up the dark valley of the Fernando, or some other stream from Monterey to Saltillo; that as they approach Saltillo, the sound of cannon, as it comes booming down the river is heard; that Taylor and his men quicken their march; that at last they get in sight of the battlefield, when they pause for a moment, until the men can take breath, and form. Then, in my imagination, I see them rushing into the battle; at this moment my excitement becomes so great that I awake.

"We do not know, Mr. Chairman, what moment we shall hear of a tremendous battle having been fought. You, Mr. Butler, have a son there; you, Mr. Harris, a nephew; scarcely a family in Frankfort but has some relation there. Colonel Davidson a son; Mr. Crittenden a son; Mr. Harlan a son; Colonel Heady, of the Senate, a son; I have an only one there. The next news from the theater of war may put our families in mourning. But, in the midst of this general distress, it is consoling to see with what philosophy the governor bears it. He slowly walks from the palace to the secretary's office, and then back to the palace, with stoical firmness that does honor to his resolution. Cato, when in Utica, never showed more. He knows none of the Owsley family are in danger—they would have been soldiers 'if it had not been for those vile guns.' The only danger that the Owsley family is in, is, that they may be mashed up in the palace gate in a rush for offices; and when they get them, they can truly say, that they are competent to the emoluments thereof.

"Mr. Kinkead remarked that I seemed to plead for mercy. No, sir, I ask no mercy of any person on this earth. I appeal to my God alone for mercy. I would despise myself if I even felt like asking the pity or mercy of any human being in this world. I implore the justice of the Senate—nay, I demand it.

"Mr. Chairman, I will say no more. I return this committee my thanks for the polite attention they have given me in this argument; and to Mr. Kinkead, I will say, that he has deported himself in this case like a gentleman; and should he hold the secretary's office, I hope His Grace, the 'duke,' may give him a better berth than he has given me."

APPENDIX.

"The committee of the Senate, composed of Messrs. Harris, Butler, Draffin, Wall, and Thornton, made an able report, accompanied with a resolution rejecting the nomination of Mr. Kinkead, upon the ground that I was

the secretary of State, and that the governor had no power to turn me out. The four first-named gentlemen concurred in the resolution. Two or three weeks afterward the Senate, which was composed of thirty-eight members, concurred in the report of the committee by a vote of thirty in favor of it to eight opposed to it. Within two or three days, I resigned the office of secretary, and sent my resignation to the governor, and notified the Senate of the fact that I had resigned, and enclosed in my note to the Senate, a copy of the resignation I sent to the governor. A few days after that, the governor renominated George B. Kinkead, in the place of George B. Kinkead, resigned.

"What was the motive of the governor in doing so ridiculous an act, I can not tell, when the journals of the Senate showed he had been rejected, and, of course, had no office to resign. It was like the arrow of a Parthian, shot, in full retreat, at the Senate; but the arm was too feeble to bend the bow, and it fell far short of the mark.

"The reader will perceive in this appendix, the letter of Austin P. Cox, and the affidavit of Henry C. Thomas. They are alluded to in the speech. Also the accounts of Governor Owsley, for money expended for his own convenience, and which he made the public pay. Among the items there is one of fifteen dollars, paid the trustees of Frankfort, for water furnished his family. He might as well have charged for the coal the family used, or the meat they eat. Two thousand four hundred and thirty-one dollars went through the Second Auditor's office; there are fifty dollars more on the books of the penitentiary—making two thousand four hundred and eighty-one dollars. These sums were drawn out of the public treasury without an appropriation made by law, so far as I can find, and right in the teeth of the Constitution—which says no money shall be drawn out of the public treasury without an appropriation made by law. I find an appropriation of one hundred and fifty-one dollars and forty cents, in favor of Moffett & Co., merchants of Frankfort, for a carpet for the palace. Put the whole money expended by the governor together, and it will stand thus:

Money drawn by warrant from the Second Auditor	$2,431 00
An account against the State at the penitentiary, for a dozen fine chairs for the governor	50 00
Paid Moffett & Co., for a carpet for the palace	151 40
Total	$2,632 40

"The accounts are so voluminous that I have thought it advisable to omit the publication of them, as it would delay too long the publication of the speech.

"What an economical governor we have, especially when the money goes to his use!

"BEN HARDIN."

"This day Henry C. Thomas made oath before me, a justice of the peace for Franklin county, that he is thirty-eight years old, that he was raised in the county of Bullitt, and he has known Ben Hardin ever since he can recollect. During all that time he has practiced law in the Bullitt Circuit Court; that for the last four years this affiant has ridden deputy sheriff; that since Ben Hardin has been secretary of State, up to last September, he does believe that he has not been at the circuit court of Bullitt more than one-half of the time the court has been in session. That said Hardin sent for him yesterday, to attend the committee, but he was sick and could not attend. This statement is asked by Mr. Hardin, because he does not know that he can remain in Frankfort until Tuesday next.

"HENRY C. THOMAS."

"Subscribed and sworn to by Henry C. Thomas, before the undersigned, a justice of the peace for Franklin county, this 9th day of January, 1847.

"H. WINGATE, J. P."

"FRANKFORT, February 8, 1847.

"*Hon. B. Hardin:*

"In reply to your note of to-day, I beg leave to state, that I have acted as assistant-secretary for several secretaries of State, viz: Thos. T. Crittenden, John J. Crittenden, and William Owsley, Esq., perhaps others whose names I do not now recollect. I was 'in the habit, with their knowledge, of signing their names to official papers, in their absence, when attending to law business, and in their presence,' when in the office. I did all the clerical business while I acted in the capacity of assistant-secretary, and know not that my principals ever signed their names to any official paper.

"Very respectfully,

"AUSTIN P. COX."

CHAPTER XXVII.

THE CIRCUIT BENCH FOR HALF A CENTURY.

THE Constitution of Kentucky of 1799 was peculiar in that it established a Court of Appeals; also, county courts, but left the Legislature to its discretion as to the creation of intermediate tribunals. This peculiarity did not result from accident. Prior to 1799, general common law and chancery, as well as criminal, jurisdiction, was vested in district courts. These courts were held at certain designated points in the State, and had local jurisdiction over an extensive territory, usually embracing several counties. In view of the scattered population, it was a very proper arrangement in 1792, but as the counties grew more populous and the business of the courts increased, district courts, in the opinion of some, became inadequate, as they certainly were inconvenient, for the administration of justice. Among those having this view was Felix Grundy, who favored the substitution of a circuit system, whereby a court should be held in each county, with similar functions to those of district courts. As a member of the constitutional convention of 1799, he advocated the establishment of circuit courts, but a majority of the delegates opposed the proposition. He, nevertheless, succeeded in having the Legislature vested with power and authority to establish circuit courts wherever it deemed proper. As a member of the Legislature, in 1802, Mr. Grundy introduced, and by his efforts succeeded in obtaining the passage through both Houses, of a bill establishing the system of circuit courts. The bill having been vetoed by Governor Garrard was passed over his objections, and became a law.

Thus circuit courts were established in the State, substantially as they have ever since existed.* These tribunals had general, original, criminal, common law, and chancery jurisdiction, substantially combining the functions of the Common Pleas, Queen's Bench, and Chancery courts of England. At first two associate judges in each county sat with the presiding judge, when he went thither, at each term, but after a dozen years these were dispensed with. During the

* Democratic Review, Vol. III., page 164.

period the office of associate justice existed, it was usually filled by non-professional men, who added little else than numbers to the bench. Judge Broadnax, an old-time circuit judge, had great contempt for what he regarded as judicial excrescences. While he presided, when a question was presented for decision, he would turn to his associate on one hand, inquiring in anything but a courteous tone and manner: "What do you guess?" Then, turning to the other: "What do you guess?"

Prior to 1850, circuit judges were appointed by the governor, by and with the advice and consent of the State Senate. As at that period governor and Senate were usually of the same political party, it rarely happened that objection was made to confirmation of those nominated. The favor of the executive once obtained, no further obstacle was apprehended. That official, in exercising the appointing power, was actuated by a variety of motives, if contemporary critics may be believed, some of them not altogether meritorious. There may be noted for example, first, partiality for individuals; second, the success of the party; third, the good of the country.

An influential politician undoubtedly had advantages in the contest for the office proportionate to his political value. Numerous and potential families were always favorites of fortune. George D. Prentice, in 1833, in the *Journal and Focus* newspaper, of Louisville, published a list of members of the Pope family in office. It was a numerous array, and yet it is but just to add, distinguished for talent. It was a common complaint that the appointing power was selfishly and injudiciously exercised. Examples were not wanting to give color, at least, if not support, to the predicate.

As a rule, those appointed to judgeships were of respectable, if not first-rate, ability. "I have no fault to find," said Mr. Hardin, in 1849, "with the present judges, that I am aware of, either of the Court of Appeals or circuit courts. They are about as able men as we can get." It has ever been true that it is not every skillful lawyer that will make a competent or successful judge. Qualities that shine at the bar often lose their luster on the bench. The advocate and jurist are characters not always combined. Barry, chief-justice of the New Court of Appeals, is an instance—a bright and eloquent lawyer, but who fell short as a judge.

The occupants of the bench were men of high character for integrity, and, as a rule, of ability and learning. Now and then, new judges wore their honors stiffly, but generally the excessive judicial

dignity, exhibited in older States, was relaxed in Kentucky. In the court-room the judge was orderly, dignified, and sometimes rigid. Stories are told of old judges who were the civil service reformers of their day, who anticipated the age of steam and electricity in their dispatch of business. Off the bench, the judge was not to be distinguished in bearing from the average dignified and successful practitioner. Travel and association on the circuit usually broke down any barrier dividing bench and bar. Tradition has it that on occasion when lawyers were overtaken in "wine and wassail," "his honor" did not always escape. The latter sometimes shared such foibles as card-playing, and wagering on the result—the latter not, however, for profit (we may well believe), but for the sole and *bona fide* purpose of adding interest to the game.

While the bar has always criticised the judge for any excess of dignity, on the other hand, it has equally resented any marked deviation from the proprieties of his position. Such departure was instinctively felt to be disrespectful to its own body. The judge who, with a laudable curiosity touching the elephant, adjourned court to witness that animal swim the river, has ever since been the object of ridicule.* Another, who while presiding in court leisurely proceeded to comb his head, narrowly escaped impeachment.†

For the first fifty years of the century the labors of the circuit bench were not by any means onerous. The time annually occupied holding courts varied in different circuits, averaging, in 1849, according to Mr. Hardin's estimate, eighty days. No inconsiderable time was expended in horse-back travel from court to court. Each district embraced from four or five to double that number of counties, of much larger territory than now, and the distance between county towns was made seemingly greater by indifferent roads.

If the labors of the bench were light, its compensation was meager. Salaries varied from eight to sixteen hundred dollars per annum. This stipend was usually supplemented by other income, perhaps that derived from farming operations, most frequently. But neither in the period spoken of, nor later, have Kentucky judges accumulated fortunes, or laid the foundations thereof, out of their salaries.

The appointed judges enjoyed, in a marked degree, the respect and confidence of the public at large. It is true that, in 1824, the distinguished Judge Clark had incurred popular displeasure in holding the relief law unconstitutional, but this decision (finally held correct), did

* Judge Nuttall, of Newcastle. † Judge Hewitt, of Louisville.

not affect his character for integrity. Charges of corruption or partiality were rarely, if ever, heard and certainly never gained credit.

The bench of Kentucky has not escaped ambition. In 1804, Christopher Greenup stepped into the office of governor from a circuit judgeship.* Judge Clark, above referred to, did the same in 1836.

While in office, Judge McLean was twice presidential elector. As illustrating the esteem for the judicial office, it may be observed that three judges before whom Mr. Hardin practiced had previously been in Congress: Judges Ormsby, McLean, and Calhoon. During that period, William H. Crawford, after serving in the Cabinet with distinction and being voted for for president, returned to his native Georgia to become a circuit judge.

Mr. Hardin had an exalted opinion of the office. He thought it required the highest talents and learning for its proper discharge. "The judge has," said he, "nobody to help him—no time given to him to make up his opinion, and must decide hundreds of controversies during the rapid progress of a jury trial, and he ought, therefore, to be a remarkably well-read lawyer. And not only that, but he should be one whose mind has great powers of concentration and energy, because the lives, liberties, and fortunes of men are to depend upon his decisions given upon the spur of the occasion, and without a moment's time for consideration. The Court of Appeals may take time. The circuit judge, above all others in the State, should be a man of the highest order of talents and attainments." On another occasion, speaking of the qualifications of a particular person for the judgeship, he said: "Nature has been exceedingly kind to him in giving him a fine understanding, a clear and vigorous capacity, and not a kind of mind to be caught by the technicalities of the law. That kind of mind is indispensable for a judge."† Great, however, as was Mr. Hardin's respect for the office and its occupant, yet so great was his aversion to pretense, that when he suspected it, he did not spare "principalities nor powers."

Speaking of the result of elevating a certain class of lawyers to the bench, he thus expressed himself: "You know how wise and dignified they look. Take a lawyer from the bar and put him on the bench and he becomes a most dignified character, and generally puts on two

* Judge Greenup resigned as judge when he announced himself candidate for governor. For that office he had no opposition, and was a candidate but little over thirty days.

† It is believed that the person alluded to was John L. Bridges, to whom the encomium most fitly applied.

or three pairs of spectacles to look deeper into the books than any other man. Put him in a position to electioneer before the people and they will wonder almost how such a man came to get into such a world." Barring an occasional outgiving like this—applying to a hypothetical rather than a real case—Mr. Hardin was respectful in his reference to and treatment of the judges before whom he practiced. Always combative and ready with polemic blows offensive and defensive, yet the court was never the object of his attack. Personal esteem, no doubt, in part, influenced him. On one occasion he claimed that he was "ever the advocate for the rights of the judiciary, believing the bench to be the sheet-anchor of all our liberties—civil, religious, and political." He had been the colleague in Congress of Ormsby, McLean, and Calhoon, and in the State Senate of Churchill. Deferential himself, he was ever the recipient of marked courtesy from the courts wherever he practiced. Indeed, envy went so far as to charge that he had undue influence with the judges. He would be the last one to contradict such an insinuation, as may be inferred from the following utterance:

"I remember what Judge Bibb told me when I received my license. Said he, 'it is not enough for you to get a license from the judge, you must get one also from the people.' I said I would try to do so. Said he, 'you must bear in mind never to quarrel with the judge, and always, if possible, appear to be on familiar terms with him.' 'Why? said I. 'Because,' he replied, 'it invites business to you, and a contrary course will drive it away from you, if you are ever so competent.'"

When Mr. Hardin came to the bar, Nelson and Jefferson counties were in the same district, and so continued many years. Judge Stephen Ormsby, of Louisville, then presided. He was succeeded, in 1816, by Judge Fortunatus Cosby. Judge Alfred Metcalfe presided in 1817-18—Judge John P. Oldham from 1819 to 1821. All these were of Louisville. Nelson, in 1821, was cut off from the Louisville district and Judge Paul I. Booker, of Washington county, was appointed presiding judge of the district, and continued in office until Judge Armistead H. Churchill's accession, in 1833. Judge Samuel Carpenter succeeded Judge Churchill in 1847, and held the office until the elective judiciary displaced the appointed judges. Mr. Hardin practiced in several counties of the Breckinridge district. The first judge before whom he appeared in that district was Henry P. Broadnax, of Logan county. He was succeeded by Alney McLean, in 1821, and he by John Calhoon, in 1842. In the latter part of his career, Mr.

Hardin practiced before Judge William L. Kelly, in the Washington district, before Judge John L. Bridges, in the Danville district, and Judge Ben Monroe, of the Green district. He had frequent cases in Louisville, and occasional retainers in different parts of the State, beyond the territory in which he usually practiced.

Stephen Ormsby.

A brief sketch of Judge Ormsby has already been given in a previous chapter.* He was a man of great personal worth, and not less highly esteemed as a judge. That the relations between him and Mr. Hardin were of a kind and friendly nature may be inferred from his appointment of the latter as Commonwealth's attorney, March 10, 1810, in place of Gabriel I. Johnson, of Louisville, a post held by Mr. Hardin until 1816, when Charles A. Wickliffe succeeded him.

Judge Ormsby was a native of Ireland, whence he deemed it prudent to migrate after the Emmett rebellion on account of his known sympathy with that ill-fated movement. On crossing the Atlantic he at once made his way to Kentucky, and took up his permanent residence. A gentleman by birth, and a lawyer by profession, he speedily became a successful practitioner and a prominent citizen. From the bar, he came to the bench before the beginning of the century, and served until 1810. During the war of 1812, he served a short while as aide-de-camp to General Armstrong. He became first president of the Bank of Louisville, on the establishment of that institution, in 1817. After serving several years in this position, he finally retired to private life, and died at an advanced age.

Fortunatus Cosby.

Judge Cosby was born December 25, 1766, in Georgia. At an early age he removed to Virginia, where he remained until manhood. He graduated at William and Mary College at nineteen years of age; studied law; married Mary Fontaine, and with his father-in-law, Colonel Aaron Fontaine, removed to Harrod's Creek, in Jefferson county, in 1798. He began practice of the law in Louisville, and soon after removed his family thither. His first domicile in that city, in keeping with his slender resources, was a log cabin, but professional success soon enabled him to build a brick residence, said to be the second of that material in the city. He was appointed circuit judge by Governor Charles Scott in 1810. He earned the reputation of a

* See page 50, *ante*.

profound lawyer, and a learned and impartial judge. At the bar he was successful—especially so in a pecuniary view.

His generosity and benevolence, however, retarded him in the accumulation of wealth. He was scholarly, brilliant in conversation, genial, and companionable. Differing politically, yet he and Mr. Clay were ever warm personal friends. His wife was the fit helpmeet of such a man, and made home attractive by many virtues. He died October 19, 1847. His son, Fortunatus Cosby, was a poet of more than ordinary merit. Mr. Collins, in his history of Kentucky, has collected several of his productions.

Alfred Metcalfe.

Judge Metcalfe became circuit judge in 1817. He had not resided in the district prior to his appointment, and came to it a stranger. He was tall and slender in person and of delicate physical constitution. He died in office in 1819.

John P. Oldham.

Judge Oldham, a citizen of Louisville, became judge in 1819, and continued in office until 1826, being succeeded by the well-known Henry Pirtle, an early friend of Mr. Hardin. He was a member of the House of Representatives for Jefferson county, in 1828. Mr. Webb, in "Catholicity in Kentucky," refers to him as the personal friend of Father Badin, a widely-esteemed pioneer priest. By change in district, Judge Oldham did not hold court in Nelson county after 1821, being succeeded there at that time by Judge Paul I. Booker.

The subjoined sketch of Judge Oldham is from the graceful pen of one who owes his large natural endowments to a common ancestry.*

"John Pope Oldham was born in Jefferson county, Kentucky, in the year 1785, and was the son of Colonel William Oldham, who commanded the Kentucky troops, in 1791, at the battle known as St. Clair's defeat, and who fell in that battle while gallantly leading his troops to action. Colonel Oldham had served as an officer under Washington, during a part of the revolutionary war, and never sheathed his sword until the contest ended. The county of Oldham, in our State, was named after him, and in commemoration of the many services he had rendered his country.

"His mother, Penelope Pope, was the daughter of Colonel William Pope, who came from Virginia to Kentucky in 1779, landing at Louisville. Judge Oldham related a somewhat interesting incident in the passage of Colonel

* Colonel Samuel B. Churchill.

Pope and his family down the Ohio to Louisville. Colonel Oldham, then of the army, had been ordered to Kentucky and the West, to report the condition of military affairs there, and while he was returning to the East by the way of the Ohio river, he met Colonel Pope descending that river with his family; and, as the one was anxious to learn what was transpiring in the East, where the war was raging, and the other to learn all about Kentucky, which he was about to make his home, they landed their boats and passed the day together.

"Penelope Pope, Judge Oldham's mother, was then only eleven years old, but a young girl, I have always understood, of surpassing beauty and intelligence, and Colonel Oldham, then a young and dashing officer, was so impressed by her attractiveness that, in taking leave, he said to Colonel Pope: 'As soon as the war ends I will return to Kentucky and claim this fair young girl for my bride.' As soon as the war closed he came, sure enough, proposed, was accepted—and thus it happened that Colonel William Oldham and Penelope Pope were married near Louisville, Kentucky, in the year 1784. As stated above, in 1791, only seven years after this happy marriage, Colonel Oldham fell in battle, but left his wife ample means to educate and provide for their children.*

"Judge Oldham, as well as all his children, had every advantage the country could afford, and when he reached the requisite age was fully prepared for the practice of law. At an early age he married Miss Lucinda Talbot, one of the gentlest and purest of women, and they lived together in peace and happiness for nearly fifty years. Judge Oldham met with success in his profession from his first entrance in it. When thirty years of age he was appointed circuit judge, and I think remained upon the bench until 1826, when he was elected to the Legislature, but only served one term. It never seemed that he had any great desire to remain in public life. He received the Democratic nomination for lieutenant-governor in 1828, but he was a member of the convention and promptly declined the honor. Mr. Breathitt, afterward governor of Kentucky (his warm personal friend), was nominated in his place. In the year 1829, when General Jackson became President of the United States, Judge Oldham was appointed postmaster of Louisville, and after fulfilling the duties of that office for seven or eight years with entire satisfaction to the president and the people, he sent in his resignation, and never sought or desired any public place thereafter, but ever seemed happiest among his friends and family. Judge Oldham was a man of liberal education, of courtly manners, of fine personal appearance, and of great personal dignity. He was a man of perfect honesty and integrity, and of great promptness and undaunted courage, but never quarrelsome, but, on the contrary, a most genial companion. Like most decisive and successful men, he liked to have his own way, but was always open to reason and cor-

* Mrs. Oldham, subsequently, was married to Harry Churchill.

rection, and especially so when talking to any one for whom he had much respect and regard. His friendships were strong, and he was not much of a hater, but woe to the man who ever dared deliberately to insult or trample upon him. Take him, all in all, he was a most admirable gentleman; honest, courteous, honorable in all things, determined in advocating what he thought was right, but ever agreeable and pleasant in discussion when others differed from him. He loved independence and abhorred debt; he was faithful in discharge of every trust imposed upon him.

"He had two sons and two daughters. Both of his sons died without issue. His two daughters were accomplished and beautiful women. The eldest married the Hon. William F. Bullock, of Louisville, and the other Mr. Horace Hill, for many years president of one of the Louisville banks, and who was a citizen highly esteemed by all who knew him. Judge Bullock still lives, honored by all, a noble specimen of culture, integrity, and talent."

Paul I. Booker.

Judge Booker was born August, 1785, in Prince Edward county, Virginia. He came to Kentucky in 1806; studied law; was admitted to practice at Springfield, and enjoyed fair professional success. He represented Washington county in the Legislature in 1816. He favored the right of Lieutenant-Governor Slaughter to succeed to the governorship on the death of Madison. Slaughter had fought under his command at New Orleans, where Booker commanded a company.

At the close of his legislative term, he was appointed Commonwealth's attorney by Judge William L. Kelly. He especially distinguished himself in the prosecution of Samuel Davis, charged with the murder of one Smith. In that case Judge Rowan defended. A most remarkable case it was. Davis was a short man, not over five feet six inches, and very fleshy. Smith was a tall man, and slender. They had a personal altercation, and, during its progress, Smith stooped over to strike, when Davis stabbed him in the shoulder with a knife, severing the chyle duct. On straightening up, the orifice of the wound through the skin was an inch or two down on the breast, some distance from the actual puncture of the flesh. An unsuccessful attempt to probe it was made. Dr. Ephraim McDowell, the distinguished and well-known physician, was sent for, and came. He pronounced it a mere flesh wound, and not at all dangerous. But in a day or so Smith was seized with a swelling of the abdomen, which, despite all medical aid, continued until death ensued—partly as the result of the deposit of chyle in the abdominal cavity and partly from

pure starvation. Rowan's defense was based on the theory that the deceased was not killed, but died of starvation. Medical men corroborated this so far as to say that deceased died of starvation, although they said starvation was the result of the wound. The prosecution was ably conducted by Booker. His speech was said to have been fully equal to that of Rowan, who was always able. The defendant was, however, acquitted by a jury unaccustomed to the subtle sophistries of the bar.

In 1821 Booker received the appointment of circuit judge from Governor John Adair, a post he held for twelve years. He was a clear-headed man, exceedingly logical in his modes of thought, and of excellent attainments. He discharged the duties of his office not only with credit to himself, but to the satisfaction of the bar and people.

In 1833 he had an attack of cholera and fell into bad health. After that he seems to have suffered habitually from the apprehension of death, or from apprehensions which, at least, slight causes would arouse. He never practiced law afterward, except in matters where he had a personal interest. He died in May, 1872, and was buried in Washington county, where his life had been spent.

Armistead Henry Churchill.

Judge Churchill was born near Louisville, October 19, 1796. He was the son of Harry Churchill and Penelope Pope, and half brother to John Pope Oldham, already mentioned. After attending Transylvania University two and a half years, he studied law at Lexington under the direction of his distinguished uncle, Governor John Pope. Receiving license he began his professional career in 1818, at Elizabethtown, where he spent his subsequent life. He was a successful practitioner. In 1832 he was chosen a member of the State Senate, and was a colleague of Mr. Hardin in that body. He had served but one session, however, when he was (February, 1832) appointed circuit judge. His judicial career continued fifteen years, in which period he gained credit and satisfied public expectation to a marked degree. "A more upright man never sat upon the bench," was the expressed opinion of Mr. Hardin.

On account of ill health he resigned his office in 1847. He survived the civil war, and had passed four score before his death. He was long a member of the Episcopal church, to the interests of which he devoted much of his later life. He was a man of culture and many private virtues, and left behind an unsullied name.

Samuel Carpenter.

Judge Carpenter was a native of Madison county, Virginia, born October 4, 1785. About ten years afterward he was brought by his parents to Bullitt county, Kentucky. It was but an ordinary English education that he obtained. He studied law at Bardstown, where he settled in 1805—the same year Mr. Hardin came thither to enter Felix Grundy's office to complete his studies. In 1821 he was elected the member from Nelson senatorial district to the Senate. It is said that for lack of taste for political life he resigned after two years service. It was the period of "relief" legislation, and Judge Carpenter resigned just in time to escape the "judge breaking" comedy of the following year.

In 1828 he joined the Baptist church and was shortly afterward ordained elder. He had pastoral charge of the churches at Bardstown and Mill Creek for several years. The former he almost destroyed, says a writer of that faith,* "on account of his adhesion to the Campbellites." The church building was sold by legal process for a small debt and Judge Carpenter purchased it. But he resold to the Baptists for a nominal sum, winning their favor by this generous act. After uniting with the "Reformers" in 1833, he preached occasionally, but his law practice chiefly engaged him.

In 1847 he was appointed by Governor Owsley circuit judge, in which office he continued until 1851, when he was superseded by the new Constitution. As a judge he was noted for rapid dispatch of business. The gentlemen of the bar were kept at a "double quick" in Judge Carpenter's time. Many are the anecdotes related illustrating this trait. Court opened early and held late, and the noon recess was brief. Many cases received short shrift in absence of counsel in the early morning. That he and Mr. Hardin were not *en rapport* may be inferred. Said the latter, "Judge Carpenter not only keeps up, but actually a year or two ahead of the docket." That the judge enjoyed the favor of Governor Owsley was not a passport to Mr. Hardin's good graces.

He was better versed in precedents and reported cases than in the general principles of the law. At the bar he and Mr. Hardin were often opposed, and in their younger days their encounters were not always amiable.

Judge Carpenter in person was slender, under medium height, of excellent cranial development, and capable of great physical endur-

* Spencer in his History of Kentucky Baptists.

ance, active and energetic. He spent his life at Bardstown. He was married in 1815 to Margaret Slaughter, and from this union sprang three sons and seven daughters. He died June 24, 1857.

Henry P. Broadnax.

Judge Broadnax was a native of Virginia. After receiving a good education, he emigrated in youth to the Green river region of Kentucky. Here he began practicing law. In 1804 he became circuit judge, an office he held to old age. He ultimately resigned, retiring to his farm in Logan county, where he spent the close of his life.

He was a lawyer of fine attainments and an able judge. He was distinguished for his uprightness and firmness of character. Although frugal in habits, he was generous to the poor. In the neighborhood in Logan county, where he lived, there was at one time no house of public worship, and the people being generally indigent were unable to erect one. Judge Broadnax built one at his own cost. Returning from holding court, on one occasion, a delegation of his neighbors waited on him to notify him that the woods had caught fire and burned the meeting-house, and to inquire what he proposed to do about it. "I built that house," he responded, "and gave it to the Lord, and if He don't take care of His own property, I can't furnish him another."

He became a member of the Presbyterian church late in life. He never married or engaged in politics. He is said to have been small of stature, punctilious in dress, dignified in manner, and blameless in life. He died in 1857, almost a nonagenarian.

The following incident from the "Life of John J. Crittenden," is quite as pertinent here as there:

"There are, perhaps, people now living in Logan county, Kentucky, who remember Judge Broadnax. He was a stately, high-toned Virginia gentleman, who dressed in shorts, silk stockings, and top boots. He had an exalted sense of the dignity of the court, and a great contempt for meanness, rascality, and all low rowdyism.

"Mr. Crittenden used to describe, in his most inimitable manner, a scene which took place in the court-room, in Logan, where Broadnax presided. A man had been indicted for biting off another man's ear, in a street brawl. This was a penitentiary offense, and Mr. Crittenden was engaged to defend the prisoner. Judge Broadnax was a warm friend and admirer of Mr. Crittenden, but he railed at him fiercely for taking fees of such low rascals. The judge was, at heart, an aristocrat.

"In this case, after great difficulty and delay, eleven jurymen had been obtained. Many respectable men had been summoned, and rejected by the counsel for the prisoner, and both the judge and sheriff were much exasperated. At last, an ill-looking fellow with a tattered straw hat on his head, half the brim being torn off, a piece of his nose gone, and his face bearing many other evidences of drunken brawls, was brought in. After looking at him a moment and asking him a few questions, Mr. Crittenden said: 'Well, judge, rather than be the cause of any more delay, I'll take this man.'

"The judge, who had been looking on angrily, could no longer control himself. He sprang to his feet, exclaiming: 'I knew it; yes, I knew it! The moment I laid my eyes on the fellow I knew you would accept him.' Then, taking a contemptuous survey of the jury, he exclaimed, aloud: 'Did any living man ever see such a jury, before?'

"Mr. Crittenden quietly replied: 'Why, your honor, I pronounce this a most respectable jury.'

"After this speech of the judge, Mr. Crittenden said his mind was at ease about his client; he knew he would be acquitted, and he was."

Judge John Calhoon, while a candidate for the appellate judgeship, in 1851, happened at Russellville. He had been admitted to the bar while Judge Broadnax was on the bench, and felt great reverence for him. Said he to a party of friends: "I can not leave Logan county without calling on Judge Broadnax." So he did, and received a cordial welcome. Judge Broadnax had become very pious after his retirement from the bench, and was exceedingly assiduous in his devotions. His guest had not remained a great while before a servant brought into the room a stand-table with a bible upon it.

JUDGE JOHN CALHOON.

Calhoon was not left long to conjecture the meaning of this. "Mr. Calhoon," says he, "the hour has arrived for me to engage in devotion, and I would not omit or postpone it if President Fillmore himself were here. You can remain, or, if you prefer, you may retire, and I shall not be at all offended." "No," said Calhoon, "I

will remain. I have heard you do most everything else, judge, and I am disposed to remain and hear you pray." Not the least disconcerted by this light rejoinder, Judge Broadnax asked him to kneel in prayer. It was on a hard, uncarpeted, ashen floor, and the prayer was long—rendered longer than usual by earnest supplications for mercy to his impenitent friend.

Calhoon's impiety was descanted upon at great length and his pardon was asked for—of the Being to whom all things were possible. But afterward Judge Broadnax parted very kindly from his old friend, and the latter went on his way considerably knee-worn by the hard floor.

"I made diligent inquiry," says Hon. James H. Bowden in a letter to the author, "but could hear of no one who had ever seen a likeness of Judge Broadnax. It is not so hard to get a picture, more or less distinct, of the moral and mental man. Indeed, the many anecdotes his old acquaintances easily recall, are told as illustrations of his peculiar modes of thought and feeling. They all present him as a man of active and persistent prejudices, which were roused whenever the religious or political opinions of others came close enough to his own to be struck at.

"Doubtless he was a man of something more than ordinary talent, and a lawyer of very much more than common acquirements. As a judge he had favorites; but while he manifested his personal preferences, he was able to forget them in making his decisions. In a case in which John J. Crittenden and Solomon P. Sharp were attorneys on different sides, he interrupted the latter so often by stating cases which Sharp regarded as irrelevant and intended merely to harass him, that he at last said: "May it please your Honor, if the heavens should fall, how many larks do you think you would catch?" Sharp was a Democrat, Broadnax a Whig, and it is not impossible the judge thought that political heresy ought to have been an indictable offense.

"From the marrow out he was an aristocrat. A man whose ancestors were not satisfactory had a poor chance for his esteem. He even formed an adverse opinion of a man who wore a cap such as had been worn by some good-for-nothing people he had known in Virginia. He seemed to think that merit always succeeds, and, therefore, poverty was in his eyes conclusive evidence of the lack of merit; he had no respect for a weak character; and poor people by their poverty proved their weakness.

"Mr. M—— told me he was with the judge once when suffering from a disease which it was thought would prove fatal. Mrs. V——, a neighbor, between whom and the judge social relations had been disturbed, came over to see him in his extremity. Mr. M—— said: 'Judge, here is Mrs. V——, who has come over to see you.' The judge looked at her and turned his head away, saying: 'I don't know her.' Mr. M——, supposing he had

failed to recognize her, told him who she was—his next-door neighbor. At last he said: 'Oh, yes! I know who she is—a woman of a great deal of pretension and very little piety.' Thereupon she began to lecture him on his short-comings, lamenting that he was so poorly prepared to meet his impending death; and she kept it up until he got so mad as to break up the disease. But he did not attribute his recovery to the reaction thus produced. He had sent for Mr. B——, an old and reverend minister, who prayed for him. 'If that prayer doesn't cure me,' he said, 'it will not be Mr. B——'s fault.'

"But for all these peculiarities, he was kind-hearted and ready to help the distressed. It seems that he was not averse to having his good deeds known—not that he published them, but he was not in any degree secretive in regard to them. He seems to be remembered more distinctly on account of his eccentricities and rough virtues than for serious faults. Many illustrative anecdotes could be given. For example: Meeting a poor man, who had a house full of children, he stopped him and asked if he wasn't named B——. 'Well you're no account; you have no right to have children; you're a trifling fellow;' all of which was merely the prelude to his directing B—— to send one of his children to school at the judge's charge."

Alney McLean.

By change of districts Judge McLean, of Greenville, in 1822, succeeded Judge Broadnax in the Breckinridge district. Mention has already been made of some of the events in his life in speaking of his congressional career.* He was always an active politician. His accession to the bench and twenty years service there did not diminish his interest in public affairs.

He had served as a captain at the battle of New Orleans, and while not with the Kentucky troops, who, in the language of General Jackson, "ingloriously fled," yet he resented this stigma cast upon his State. He was ever an opponent of "Old Hickory." Naturally enough he was the friend of Mr. Clay. He was, while judge, chosen a Clay elector in 1824 and again in 1832. His taste for and activity in politics shocked those of his constituents specially sensitive as to the proprieties of the bench.

He was pronounced by one who knew him, and was well qualified to speak on the subject, "a model gentleman, of great courtesy and kindness to the junior members of the bar, an honored citizen, and a just judge." He died in office in 1841. Thirteen years later the State Legislature created a new county and named it in his honor.

* Chapter VI.

John Calhoon.

Judge Calhoon was born in Henry county, Kentucky, in 1797. He had such advantages as a sprightly youth could make of the primitive schools of the Green river country, to which his father had removed at any early day. His father was an associate justice in Daviess county, while circuit courts had officers of that character.

Judge Calhoon for a considerable period was a deputy in the clerk's office of Ohio county. In 1817 he came to the bar and began practice at Hartford. In 1822 he was an applicant to the governor for the appointment of Commonwealth's attorney in the newly-created district of which Ohio was part. He had for a competitor Mr. Hardin's cousin, John Hardin McHenry, then of Leitchfield. Judge Calhoon met Governor Adair, at Frankfort, but soon learned that his aspirations were in vain—that the governor had already decided to appoint McHenry. It was, perhaps, to McHenry's advantage that his kinsman and preceptor, Martin D. Hardin, was near the throne—in the capacity of secretary of State. At the instance of Calhoon, the commission for his rival was prepared and he brought it to Leitchfield on his return—he and McHenry being warm personal friends. Meeting the latter, Calhoon gravely informed him that he had obtained the appointment, whereat McHenry warmly congratulated him. "Yes," said Calhoon, "I have got it—here is my commission." McHenry glanced over it and discovering his own name in it, asked what that meant. "Why that is strange," said Calhoon, with feigned surprise, "it is evidently a mistake." But it was not possible to carry the deception further, and the next day McHenry accompanied his friend to Hartford, where he began a long, honorable, and successful career.

Judge Calhoon was for several years a member of the State Legislature; in 1820 as a member for Ohio county, and for Breckinridge county (to which he had removed) in 1829, 1830, and 1840. He served two terms in Congress (1835–39), defeating Thomas Chilton, a noted politician, for the first. Chilton and Calhoon had been competing candidates for Congress in 1827. The election was close, but the former had a small majority. The officers in declaring the result excluded a precinct for irregularity, and gave Calhoon the certificate. Both gentlemen started to Washington, but meeting at Louisville they agreed to resign and have a new election. At the new election Chilton's majority was decisive. On Judge McLean's death Calhoon was appointed circuit judge by Governor Letcher—an office he held until the new Constitution displaced him. For this appointment he had

again contested with Mr. McHenry, but this time with better success. At the election of 1851 he was defeated by the eminent jurist and statesman, Elijah Hise, for judge of the Appellate Court, after a brilliant canvass.

The county seat of McLean was called by his name, and there he spent the close of his life. Judge Calhoon was a life-long Whig—ever the friend and admirer of Mr. Clay. In a letter to Francis Brooke in 1839 Mr. Clay wrote: "Mr. Calhoon, of our State, being on a visit of business at Richmond, I have given him a letter of introduction to you. He is intelligent, shrewd, and trustworthy. You may give him all confidence." Hardin and Calhoon were also friends. They met at the bar and on the circuit as lawyers. Both brilliant—like attracted like. In 1829–30 they were both in the State Legislature, though in different houses. In 1835–37 they were colleagues in Congress. After Judge Calhoon was in failing health (not a year before his death) Mr. Hardin visited him and spent a day or so with him. On his return he observed to an acquaintance that the signs of death were visible on his old friend. Hardin himself had apparently good prospects for many years of life—yet they died within a month of each other—Hardin preceding. Judge Calhoon was in Louisville under treatment of an eminent physician when the end came, and his professional brethren of that city appropriately expressed the public loss at a meeting held at the time.

He was an orator, a wit, and an able, skillful, and accomplished lawyer. He was a profound judge of human nature, and at his best before the jury was omnipotent. It is related that he obtained the acquittal of a negro girl who had burned her master's house by depicting the cruelties of the latter to his slaves. His faculty for humor and power of repartee had many illustrations. In a case in Hancock Circuit Court, Judge McLean presiding, he and Mr. McHenry were on opposite sides. Calhoon suggested that an order had been made at a former day of the term, which opposing counsel denied. The record was examined and the order found to be as stated. Said Judge McLean, "the court must have been asleep or bereft of its senses when that order was made." "Possibly your honor is right," retorted Calhoon, "but my esteem for the court prevents me taking either side of the question."

After his career began he supplied in large measure the defects of early training. He was a large, handsome man—over six feet in height, and of fine presence and address.

CHAPTER XXVIII.

PROFESSIONAL CHARACTERISTICS.

MR. HARDIN was in active practice as a lawyer during a period extending over forty-six years—1806–1852. During that period he was a regular and successful practitioner, not only in the courts of the county of Nelson (where he resided), but also in Hardin, Meade, Breckinridge, Grayson, Bullitt, Larue, Washington, Marion, Green, and Spencer—an area of country sufficiently large with its wealth and population—if in Europe and ruled by an emperor—to have ranked among the "great Powers." But his labors were by no means confined to that territory. He frequently accepted retainers in other counties of the State, and not seldom beyond its limits. In 1837, during that period celebrated in one quarter, at least, as * "Flush Times in Mississippi and Alabama," he began regular visits to Jackson, Mississippi, for the purpose of practicing his profession. His sojourns there occurring during the winter months were repeated for a number of years, and were attended with profitable remuneration.

Political and official engagements were, as a rule, subordinated to professional interests and duties. In truth, the practice of the law was the business of his life, everything else being merely incidental. The chemist in his laboratory, the astronomer with his telescope, the ambitious general on the battlefield at the head of his army, none of these ever felt greater enthusiasm than he in the court-house dealing polemic blows in behalf of a client. His intellectual and moral nature was nevermore absolutely normal than when some protracted trial taxed his energies and resources to their utmost. He loved his profession as a sailor his ship and a soldier his sword. In its practice he employed all his powers, and his achievements there outshone all he accomplished elsewhere. He respected and reverenced those lawyers who by their talents brought honor to the guild. On the other hand, he regarded as interlopers those who, by creeping into the profession, had "missed their calling." For this latter class he lacked Christian charity. He was charged with antipathy to young lawyers, and, perhaps, was in

* Flush Times, etc., by J. G. Baldwin.

some degree culpable, but if the young gentlemen had bright parts, no one more quickly recognized and appreciated them. One of these latter, who enjoyed Mr. Hardin's friendship, remarked of him that he never had his equal as a "fool-killer." He felt himself, in some sense, an outside sentinel for the profession, and that it was his duty to challenge intruders and refuse admission to those not entitled. He esteemed it one of the most exalted callings. He regarded it as having other and higher duties than drawing pleas and haranguing juries. "The law is an honorable profession," said he, on one occasion, "and one that controls, in a great degree, public sentiment, and one also that, from time to time, has done a great deal toward saving this State from anarchy and confusion."

In the range of his practice he was employed on one side or the other of every important case. The litigant was deemed fortunate by the public who first secured his services. The Wilkinson tragedy occurred at night at Louisville, and that same night a messenger on a swift horse was dispatched to Bardstown, forty miles away, to bespeak Mr. Hardin's services for the prosecution.

In many of the counties where he practiced, he had local partners with whom he shared fees in that particular court. The well-known Joseph Holt, of Washington, in the outset of his career, was thus connected with him. Governor William Johnson, of Bardstown, sustained a similar relation at Mr. Hardin's death. Outside of any partnership he had either an express or tacit understanding with attorneys in different counties that in case of need he would be associated in their cases. His relations with his colleagues were always of the kindest character. Lawyers lived in his day, as well as before and afterward, who did not hesitate, when associated in cases, to ignore juniors and appropriate to themselves all the credit of success. To Mr. Hardin's honor be it said that no one was freer from such selfish injustice. On the contrary, while utilizing the suggestions of his colleagues or using authority supplied by them, he was ever studious to acknowledge in the most explicit and public manner his obligation, and gave others, especially younger men, the fullest share of the credit and glory of success.

There have been few men better endowed by nature with the qualities for success in his profession than Mr. Hardin. If there ever was a natural lawyer, he was one. His powers of perception and observation were remarkably quick and penetrating. From the briefest and most confused statement of a client he not only caught the salient

points of a case, but intuitively supplied its details. The falsehood or equivocation of a witness rarely deceived him. The connection of remote facts with his case never escaped his attention. When apparently absorbed in revery and reflection (which was habitual with him) he constantly surprised those about him by giving clear proof that nothing was unobserved. He could enter a case for the first time when it was called for trial, and by the conclusion of the evidence be entirely familiar with all its details and every question involved.

From boyhood he was noted for a remarkably retentive memory. The impression a fact or idea made upon him forever fixed it in his mind. He forgot nothing. He remembered what he read, heard, or saw. The genealogy of the humblest man in the range of his acquaintance was not less familiar than the long and often diverging line of adjudications on a mooted legal question. His power of concentrating his thought on a particular subject was ever a marked characteristic. He, as it were, took it into his mind and turned it over and over, taking piece by piece apart, examining its every detail. It was the recent observation of a distinguished judge that "the law is the calling of thinkers."* Mr. Hardin was characterized by one who knew him well as an "absorbed thinker."†

He had that most useful faculty for a lawyer—the power of vividly realizing the natural and logical details of a scene or event—of picturing on the mental retina every incident, detail, and circumstance in such a way that he made it all as perspicuous to the jury as if he had witnessed it himself. Said Spencer (whom Mr. Hardin prosecuted, and who was convicted of murdering his step-son, on circumstantial evidence): "Mr. Hardin told exactly how I killed him, except that I had killed him a half-hour sooner than he said." Yet, until then, so slight was the evidence of guilt, that many believed the man innocent. Not only by this faculty did he impress the jury, but he was enabled to draw facts from unwilling witnesses, and detected the falsehood of the less reticent.

He was laborious and untiring in professional labor—delighting in all its details. His mind was ever on the alert. No one more readily or accurately read the secrets of the human heart. The well-known Tom Marshall never meant to praise him when he pronounced him "a good judge of bad men." The faculty thus admitted, and even thus limited, was no slight professional qualification. It has been frequently said of him that he had that best of all senses—"common sense." It is difficult to define the idea thus expressed, further than

*Oliver Wendell Holmes, Jr., of Massachusetts. †Hon. Ben J. Webb.

to say that it indicates the equilibrium of all the mental powers, fully developed and in full, free, and vigorous action. Common sense is genius in every-day attire.

His natural endowments had been admirably supplemented by varied and extensive attainments and scholarly culture. He had been both an attentive and omniverous reader. A student, untiring and profound, he had invaded all the fields of learning and polite literature. He was not only familiar with legal principles as laid down in text-books and adjudged cases, but, like the Indian philosopher who examined the foundation of the world, Mr. Hardin had discovered the "turtle" on which the law rested. In emergency it was rare that he had not an authority to serve his purpose. When opportunity offered he indulged in research and no one was more diligent in "running down the authorities." The decisions of the courts of other States and of foreign tribunals he thought entitled to little consideration unless some law was involved affecting the particular tribunal. In ascertaining what should be the rule of law in Kentucky, on new questions, he deemed it better to rely on elementary doctrines found in the text-books, compared with our statutory system as interpreted by our own courts. "I recollect one day," says Martin D. McHenry, of Iowa, "hearing him argue a question, and I remember just how he looked and what he said—how his countenance beamed and his intellectual eyes bore directly on the judge as he said 'the whole law, may it please your honor, is comprised in a comparatively few, well-defined, well-understood, conceded principles. All else is but deduction from these.'" Said General William Preston, than whom few knew him better:

"The law book which Mr. Hardin constantly carried was a well-thumbed, half-worn copy of MacNally on Evidence. As he rode the circuit, he put a shirt in one end of his saddle-bags and MacNally in the other. I once inquired of him his reason for preferring this work to the more elaborate treatise of Mr. Starkie, at that time most approved by the profession. He replied that MacNally was an Irishman, full of the sentiments, passions, and prejudices of the Irish nation, and his book was written when his people were struggling for liberty, and somehow the principles he laid down had a *leaning* for the defendant. He did not much regard the reports of his own State, not even Bibb (the best of them), but was partial to the early reports of the Supreme Court—Dallas, Cranch, and Wheaton."

While never a specialist in the law; while familiar with the learning in his day of all its branches, he was pre-eminent as a "land"

lawyer, or, in other words, he was skilled in the law touching titles to land. The land law of Kentucky embraced a complex and difficult body of rules—the peculiar outgrowth of the circumstances of the early history of the State. He has been very generally spoken of as a great criminal lawyer, as though his fame rested solely on his success in that class of cases. He was undoubtedly possessed of great and peculiar skill in criminal practice, but there could not be a grosser mistake than to suppose that his only or his chief eminence lay in that direction.

On one occasion, near the close of his career, he remarked that he had participated in the trial of as many as a thousand cases of felony —for prosecution or defense. The question was not only mooted, but gravely argued in the celebrated Wilkinson case (for murder), whether in good morals and consistently with sound ethics a lawyer could accept a fee to prosecute in a capital case. That he could not was ingeniously urged by Judge Rowan, of counsel for defense. Mr. Hardin, who had accepted a fee in the prosecution, was berated and denounced for having done so. The following may be taken as a fair sample of the specious sophistry employed by Rowan on that occasion:

"I would ask you (addressing the jury), I would ask casuists, I would even ask the venerable and distinguished lawyer himself, to tell me what is the difference in the moral guilt between taking a man's life for his money and taking money to take his life? I declare solemnly if there be a difference in the moral guilt I have not brains to comprehend or perceive it. I can readily perceive that in reference to the exterior aspect of the two cases the former would seem to have the advantage of the latter in the fact that with it are associated a boldness and daring of which the latter is entirely destitute. The highwayman in taking the life of another for his money hazards his own life. He may himself be slain, and if he should not, he may be apprehended, convicted, and expire on the gallows. He incurs the hazard of all these events. There is a chivalry, a charm, a fascination, I had almost said a witchery, which gilds and, to some small extent, mitigates crime itself. But in the latter case, there is not one mitigating, not one redeeming, trait."

In thus urging that all the talent in the legal profession should be subject to the exclusive monopoly of the criminal class, possibly the speaker had not forgotten the time when he himself stood in the prisoner's dock to answer for slaying an adversary in a duel. It would be unkind, however, to insinuate that many excellent lawyers decline to

prosecute because they are of the class whom the Saviour requested to cast the first stone when the woman was caught in adultery. Mr. Hardin was free of these finical and supposititious scruples. He said himself that he had more frequently defended than prosecuted. "I never prosecute a man," said he, "unless I believe him guilty, and then I prosecute him quite as freely as I would a sheep-killing dog."

He was an unmercenary lawyer in the sense that he regarded the profession as something better than a mere money-getting avocation. Many instances could be collected where he volunteered his services and refused compensation. When, as often happened, he was appointed by the court to defend accused persons, unable to employ counsel, he never declined the appointment. Such clients were served as faithfully, skillfully, and ably, as those who paid generous fees. On such occasions he would usually turn to some younger member of the bar, saying, "here George," or "here Martin," "come and help me defend this poor fellow. Now, let us strip to the buff and fight for him within an inch of our lives."

"I recollect such an instance," says Mr. McHenry, "in which he called on me to help prepare and try the case. We got the poor fellow off without the smell of fire upon his garments, both of us feeling amply compensated for our labors by the consciousness that we had done a real service to a persecuted man who had nothing to pay us." When he demanded compensation, his fees were extremely moderate. In fact, his professional brethren complained that he thus depreciated the value of legal services in all the courts he attended.

Says Mr. Collins, the historian: "His practice yielded him a handsome revenue and, consequently, a handsome fortune, in spite of the extremely low fees he charged. If full fees had been charged, his fortune would have been immense."* The late Andrew J. Ballard, of Louisville, thus spoke of an interview he once had with Mr. Hardin, in which the subject of fees was mentioned: "I met him," says Mr. Ballard, "at Cushman's tavern, in Grayson county, shortly after the close of the Mexican war. I was then a young man. He talked to me and some young companions half the night, and was exceedingly entertaining. Among other things he said that most of the money he had made in his profession had arisen from contingent fees. His regular, fixed fees had not averaged over about two thousand dollars per year."

From principle, inclination, or policy, he always, where possible, maintained kind relations with the judges in whose courts he appeared.

*Collins' History of Kentucky, Vol. II, page 646.

He was not only outwardly deferential, but treated the occupant of the bench with genuine consideration. In part from self-respect, as well as respect for the court, he never contended for a principle of law he knew or believed to be wrong. It can readily be imagined—this characteristic being known—how potential were his suggestions. He not only scorned contrary modes, but had a contempt for those who indulged in them. If he made a statement of law or fact to the court, that was incorrect, he had himself been deceived or misled.

In his deportment to his professional brethren, he was courteous, and, when leisure permitted, social. He was fond of entertaining a group of lawyers, that would readily gather when he talked, and he heartily enjoyed the witty gossip of the bar. His demeanor to witnesses varied with each case and each witness. Sometimes he seemed indifferent to what witnesses said, scarcely asking a question. At others his examinations were protracted and searching. No one had greater skill in "pressing" a witness. His equanimity and patience were unfailing. If one approach failed to elicit the answer sought, he tried another. A hunter never walked around a tree in which a squirrel evaded him, with more wariness and pertinacity than Mr. Hardin crept around a reluctant witness.

No lawyer was ever more diligent in preparing his cases for trial, and in understanding the exact state of preparation. On the circuit, it was his invariable habit to visit the court-room or clerk's office each night, and examine the records in all the cases in which he was engaged for trial the succeeding day. If the prospect of his client's success was to be improved by delay, he sought delay. If a case required to be "seasoned" before being tried, that process was invoked. The case of Cy Hultz, for a criminal offense, was one of these, where he obtained repeated continuances, until public feeling against the defendant, by some peculiarity of psychological chemistry, was converted into sympathy for him.

In a jury trial, Mr. Hardin was in his element and at his best. From the calling of the case to the rendition of the verdict, he was skilled in every detail. The minutest of these had his careful attention and thought. Mistakes were avoided in indifferent matters. The selection of a jury was not unlike turning the pages of a book whose entire contents he knew. He usually knew each witness personally, and not less thoroughly than the recording angel who noted the sins done in the body. But if he did not know him individually, if ignorant of the species, he readily discerned the genus and quickly classi-

fied him. The foibles of his adversary, and opposing counsel were so many resources to be drawn on when necessary. No one could establish confidential relations with particular jurors on slighter hints, and no one could utilize facts not in evidence with greater adroitness. Of his modes of argument more extended mention will be necessary.

He was peculiarly skillful in the selection of a jury, and few were the errors he committed in this respect which human foresight could prevent. He was not only guided by his knowledge of the particular juror, but he applied principles on such occasions commonly overlooked. Once he refused a hair-lipped man on a jury, assigning as a reason (to his colleague) that "no man on whom the Almighty had put his mark would do to trust." "When," said he, "the Creator has not finished his work, let it alone. Such men always wish to bring others down to the level of their own misfortune." Says Colonel Alfred Allen: "I remember that not long after coming to the bar, and while I was Commonwealth's attorney, I was on one occasion associated with Mr. Hardin in the prosecution of a man for hog stealing. Much depended on our side on the respectability of the jury. A certain Mr. —— was called. I remarked to Mr. Hardin that he was a good man for us, as he was intelligent, well-off, and didn't depend on the 'range for his meat.' Mr. Hardin objected to him, saying that the man's father was once indicted in the same court for the same offense, and had a close shave for acquittal."

His statement of his case to the jury was usually brief and lucid. Possibly in difficult cases he did not, with entire candor, disclose in advance all the points on which he hoped for success. But he avoided the error into which otherwise skillful counsel fall—he never overstated his case.

One peculiarity marked the opening of the examination of each witness. Although the witness had been sworn in his presence the moment before, his stereotyped first question was: "Have you been sworn, sir?" If the witness appeared to desire to tell a plain story of the exact truth, he was allowed to do so without interruption. When, however, he manifested bias against Mr. Hardin's client, he did not escape so easily. When necessary he could press a witness as he would squeeze a sponge. He took no notes of the evidence, but relied exclusively on his memory, and that never failed him. He remembered not only the name of each witness, but also his particular testimony to its minutest detail, as well as any peculiarity that had

marked its delivery. Attorney-General Garland thus speaks of him in this respect:

"His memory was most remarkable as to facts, dates, names, faces, authorities, and references. I have often heard him say that every lawyer should train himself not to take notes of anything connected with trials, and this he continually practiced. He mentioned an occurrence in a long trial in which he and Judge Rowan were opposing counsel, and in which Rowan (as was his custom) took minute and elaborate notes. When his time came on to speak, his notes were mislaid and could not be found. On that account, he was unable to proceed, and the trial was postponed some hours to enable him to find his missing notes."

An incident related by the late Samuel T. Houser, a lawyer of Falmouth, strongly illustrates Mr. Hardin's powers of memory.

"He and I," said Mr. Houser, "were members of the State Senate in 1831, and were together on the committee of apportionment of representation. In speaking of his familiarity with the geography of the State and its different counties, he said he could 'bound' every one from memory (there being at that time eighty-three). This being questioned by a member, he offered to stake a dozen of wine. The wager was accepted and a map brought. Mr. Hardin began on the Virginia line and 'bounded' every county to the Mississippi river without hesitation or mistake."

"In his management of a case before a jury," says Colonel J. P. Barbour, of Lebanon, "he had no equal. His theory and statement of a case, the sagacity with which he examined and cross-examined witnesses, the accuracy with which he recollected the evidence, and the ingenuity with which he made all the facts adduced, sustain his theory for the benefit of his client, were constant subjects of remark." While opposing counsel addressed the jury, he was accustomed to pace to and fro outside the bar in rapt revery, head bowed, one hand thrust behind him, with the other gesticulating, muttering to himself in soliloquy. When his opponent made statements not warranted by the evidence, he frequently interposed, though not always. Sometimes when hard pressed, he would quit his promenade without the bar and seat himself so as to look into the face of the speaker, often manifesting a degree of excitement that required seeming effort to control.

It was, however, only when he came to argue a case that he manifested his highest skill and power. Sometimes he began as if a torrent, checked and obstructed in its flow, had suddenly broken bounds,

bearing all before it. Most usually, however, he began with more deliberation. Straightening his stalwart form to its full height, usually standing beside a table, with the finger tips of one hand resting thereon—(his crippled hand)—one foot somewhat advanced, features fixed, with expression of earnest and deep thought, the body slightly inclined forward, a few moments of absolute silence, nervously compressing the lips, and then he began.

Mr. Webb (in his "Life of Powell") says Mr. Hardin's voice was sharp and piercing, and that he was strongly energetic, both in action and delivery. Wit, drollery, sarcasm, invective, these were his chief forensic weapons, and terrible weapons they generally proved in his hands. Differing from this in one particular, at least, is the testimony of Mr. R. J. Browne, who in early life was his contemporary: "Mr. Hardin had a soft, agreeable voice. When the court ruled against him on a point, he had a most melifluous way of saying, 'I acquiesce.'" Of Mr. Hardin's manner in the court-house, Mr. Webb remarks:

"At home it was a common occurrence with Mr. Hardin to address the court or jury in his shirt-sleeves. When engaged in legal work outside of his own district, especially in places where he was little known, he was observant of the proprieties of his position until he happened to become heated in argument, and then, first, his cravat would be snatched off and cast aside; next, the collar and wristbands of his shirt would be unbuttoned and thrown back; and, finally, long before he came to the peroration of his discourse, especially if the weather was at all sultry, off would come his coat and waistcoat, and then, as nearly in *puris naturalibus* as it was possible for him in decency to go, he would thunder out invectives against some unfortunate litigant, or some still more unfortunate criminal, in a style that was not unfrequently fully in keeping with the tastes of his rough auditory."

Mr. Hardin's art as an orator was in concealing art. Possessing histrionic talents of a high order, yet he spoke not to please but to convince, and if he pleased it was but part of his plan for convincing his auditors. He subordinated every thought, feeling, and action to his theme, or to maintain the justice of his cause and the logic of his conclusions. He was an exceedingly earnest speaker. His capacity to endlessly involve and hopelessly to complicate and obscure the side of his adversary was only surpassed by his ability to make his own as perspicuous and clear as the meridian sun. The secret of his oratorical power is not altogether plain. His manner was simple and natural. When animated there was that about him that enchained the

hearer. He was not only impressive, but magnetic. On one occasion in a trial at Bardstown, he made a remarkable speech, in which (possibly getting a hint from Burns' "*Twa Dogs*") he repeated what various dogs about Bardstown had said concerning his client's adversary and opposing witnesses. The speech consumed the greater part of a day. A farmer's wife, living a few miles in the country, had that morning dispatched a negro boy to town on an important errand, with orders to hasten home. But the day wore away and the messenger failed to return, and only did so at night-fall. It was in slavery times, and the boy was clearly in for a flogging. The wife requested her husband (who had also been in town all day) to punish George for disobedience. The latter was marched out; but his master concluded he would first hear what the negro had to say in defense. "I'll tell you how it was, master," he replied, "I went to town and was starting home and I heard Mr. Hardin speaking. I put my head in the court-house door just to hear what he was talking about. He was telling what some dogs had said, and I got to listening, and the first thing I knew it was night." "Well, George," said his master, "if that is what kept you, I will have to let you off this time. I was caught by that same dog speech myself." It would hardly be unwarranted hyperbole to say that he held the attention of his hearers like an enchanter.

Some critics have found fault with his elocution. There was one virtue about it, however, covering many sins against cadence and modulation, and that was, he could be heard with ease and understood by all. He used language not for its beauty, but to clothe rather than conceal a thought, and his words poured forth like newly-minted coins. At home or abroad there was a freshness about his genius that drew and held crowds wherever he made a speech. When a case demanded it, and he was fully aroused, he vindicated his right to be called the "Kitchen Knife," a soubriquet conferred by John Randolph. "He cut and tore sometimes unmercifully," says an old lawyer. His denunciations, says another, were often "as fire applied to the flesh." But cases of this sort were exceptional. Ordinarily good temper flowed through all his addresses. Not unfrequently he pointed an argument with a verse from the Bible, or the lines of a familiar hymn, or a snatch of poetry from Burns or Homer.

His reasoning powers were vigorous and versatile. He traced cause to effect and effect back to cause; and discerned every element of a proposition, the weight and character of each, and by intellectual

re-agents reduced it to its last analysis with the skill of a logician of the schools. In his faculty of clear and logical statement of every question involved in a case lay one of the secrets of his power. But in the exercise of this talent he had rivals whom he did not encounter in another field peculiarly his own. It was once said by that gifted orator, Thomas F. Marshall (repeating what others had said before him), that no one had ever been able to write a parable, or even approach those of the New Testament, from which premise he argued the divinity of their author. As a means of illustrating and enforcing a proposition and producing conviction they exceed all arts of human logic. Undoubtedly from hence, Mr. Hardin obtained the hint for a mode of argument that he employed with powerful effect. His speeches were largely a series of narratives of events apart from his subject, but which led the mind unconsciously to a conclusion bearing directly on his theme. He did not travel the direct road of the logician, in which the hearer from prejudice or bias sometimes advances unwillingly, but amused and entertained him with circuitous detours, now and then coming suddenly into the pathway of his theme only to depart again and again return, until, at last, the logical end was reached, and with it unavoidable conviction, and reached in such a way that no adversary could turn about and retrace the route.

He was free from the folly that besets crafty minds, who, not willing to rest their case—even a good one—on the strength of its merit, tax their utmost ingenuity in hatching sophistic reasons which they mix indiscriminately with better ones and thus weaken all. Said Judge Bridges (one of the brightest lawyers that ever adorned the circuit bench) "if there were a hundred points in a case, R——W—— would never omit one of them, and possibly touch them in the inverse order of their logical arrangement, while the simple statement of a case by Ben Hardin was of itself often an irrefutable argument." As once said of Sargeant S. Prentiss, so it may be affirmed of Mr. Hardin: "He avoided the miserable error into which so many lawyers fall, of making every possible point in a case, and pressing all with equal force and confidence, thereby prejudicing the mind of the court and making the jury believe that the trial of the case is but running a jockey race."

When he had a bad case, or was beset in argument, he would sometimes address a jury for a half-hour without the slightest allusion to the case. At such times, blunders of opposing counsel, contradictions, improbabilities, and discrepancies in the evidence all had due

attention. He insinuated facts before the jury by obscure references only understood by himself and the jury, or some member of it. But if there was no remedy for the infirmity of his case in any of these resources, he turned to that dernier resort of lawyers in such emergencies—the constitution and the principles of eternal justice. The following case referred to by him in the constitutional convention of 1849, illustrates how a bad case may sometimes be saved:

"I recollect once that in Marion county some twenty men were indicted for keeping what was called a 'Spanish needle.' I argued before the jury that the punishment was too violent and disproportionate to the offense, and was cruel and inhuman. The jury brought in a verdict something like this: 'We, the jury, find the defendant not guilty; for, although we know he played the wheel, we consider the punishment cruel, extravagant, and disproportionate to the offense.' Judge Green sent them back, and they again returned with this verdict: 'We, the jury, know the man kept the wheel, but in our consciences we do not believe him to be guilty under the constitution.' They were sent back again, and on the fourth day they returned with an unqualified verdict of not guilty."*

It is said that some of his finest efforts were put forth where the amount involved was trivial. As a rule, however, he gauged his efforts to suit the emergency, using as much, but no more, power than was necessary for success.

He was inclined to regard the Court of Appeals as the refuge of weak lawyers—as a dilatory tribunal whereby the administration of justice was delayed and obstructed. In his opinion, circuit courts were adequate to attain all the practical ends of justice. "I have argued a case," said he, "before a court and jury, and yet one of these Court of Appeals gentlemen, after worrying the court a whole day taking down the evidence, would so distort and garble it that the case would not appear in the court above as below, and by that means the judgment would be reversed."

Nothing better illustrates his genius and power than the impression he made on those who heard him, of all classes and of every degree of intelligence. While he entertained the scholar, the same speech equally attracted, delighted, and instructed the ignorant. In the region where he lived and practiced, his great rivals, Rowan, Wickliffe, etc., are spoken of with unqualified praise to this day, and the survivors of that generation delight to dwell on their appearance, their manner, their talents, and characteristics. But when Mr. Hardin is alluded to, it is always to repeat some remembered thought bearing

*Constitutional Debates, 826.

the unmistakable stamp of his genius. When Cicero spoke in the forum at Rome, his hearers went away applauding his oratory, but when Demosthenes addressed the Athenians in one of his stirring philippics, the cry of his auditors was, "let us march against Philip." Without derogating from their great abilities, it seems that his rivals are best remembered because of an imposing personality, while Mr. Hardin himself survives because he wrote his own thoughts indelibly in the hearts and memories of his generation.

The testimony of a number of persons has been collected and examined as to his character and ability as a lawyer. Many of them expressing the same ideas have unconsciously employed the same language. There are none who dispute his pre-eminence at the bar. Many speak of him as a sound lawyer, a powerful and skillful advocate, as one of the readiest and best educated of elementary lawyers, as the best circuit court practitioner of his day. Some call him the Colossus of the Kentucky bar; others, the Goliah of prosecution; another, "the last of the race of giants."

He once remarked of himself, "I reckon there is not a man more intimate with the operation of the circuit courts of Kentucky than I am, and there will not be for fifty years to come." This was not a mere boast, nor intended as such, but the simple statement of a plain fact. He was in truth a legal philosopher, deeply imbued with the wisdom and learning of the law. To him the law was a moral science governed by principles as unerring as any in the moral world, and of as easy and certain application. He was, in all respects, an original man, whose character can not be measured by ordinary standards. His talents were so dissimilar to those of his distinguished rivals and colleagues that contrasts and comparisons are vain. While there is no one found with whom to compare him, yet it may be that the rugged virility of his intellect bears more than a fancied resemblance to that of the late Jere Black, and that both in many of their characteristics, and especially in a certain mental and moral manhood, are of the class whose best type was the great Scotch philosopher—Thomas Carlyle.

CHAPTER XXIX.

COURT-HOUSE REMINISCENCES.

ONE who from boyhood had known Mr. Hardin well and heard him argue some of the celebrated cases in which he was at different times engaged, remarked that he had never entered a court-house without thinking of him, and involuntarily, though vainly, casting the eye about to see who might compare with him. During his life few were the court-houses he entered where he was not a central figure. When not engaged as counsel in a trial, he usually listened at its progress, especially if he felt any interest in the matter in contest, the parties, or their attorneys. Instances occurred where he took part for the first time after the testimony was concluded.

When he felt no interest in court proceedings, he frequently engaged the bar-loungers in conversation. He quickly gathered an attentive and admiring coterie on such occasions. Narrative and anecdote were the staple of his talk, and now and then the merriment he produced, attracted reproof from the court. Feeling himself culpable at such times, he would apologize, with assurances, courteous and voluble, that no disturbance or disrespect was intended.

Mr. Hardin's skill and success were the envy of the younger members of the bar. With the latter it was an ever-recurring question as to how successfully to deal with "Old Ben." They discussed it among themselves and devised many plans of action, but like the mice who resolved to bell the cat, the difficulty was to execute them. A couple of young lawyers discussing this subject on one occasion concluded that he might be overcome or subjugated by launching all the weapons of invective and sarcasm upon him—in short, by giving him a sound abusing. The idea was, that if assailed by all young lawyers in this way, it would intimidate him and render him less formidable. One of the young conspirators (now one of the first lawyers of the State) excused himself on account of ancient alliances of friendship between his own and Mr. Hardin's family—but he encouraged his young friend to try the execution of the project. Shortly after, a case came up where T—— and Mr. Hardin were opposed. Without any

special relevancy, the former began a personal tirade, of which the latter was the object. Mr. Hardin listened at first with surprise, but at last with evident amusement. In reply, he inquired what he had done to the young gentleman to so incense him. He was surprised at being so vigorously assailed, because unconscious of having offended. He finally concluded that T—— supposed that he (H.) envied him—envied his lawyership and oratorical ability. Assuming an air of child-like simplicity, he assured T—— that he did not envy him. He turned to the court and earnestly protested that he did not and never had envied T——. He addressed the bar with pathetic seriousness, and hoped they would not do him the injustice of suspecting him of envy or jealousy. By this time everybody was in a titter, and poor T—— was cured of attacking "Old Ben."

YEA, YEA, BENJAMIN.

A very large number of readers throughout Kentucky and Middle Tennessee have heard of the chief character in the following story: Leonard Jones, better known as Live-Forever Jones, was an eccentric character who had notoriety in Mr. Hardin's day, and afterward, because of his religious creed, professing to believe that by leading a life of absolute sinlessness, his earthly existence would be prolonged forever. He had not originated this doctrine, but was the convert of one Miller, who had proclaimed it before him, and possibly had the honor of being its discoverer. But, finally, the latter died, just as all sinful mortals inevitably must. Among his last requests, one was,

that Jones should preach his funeral sermon. "It was the sorest task I ever performed," said he, alluding to it.

Jones was without special calling, dabbling to some extent in politics, preaching occasionally, but delighting above all things in a law-suit. By asserting pretended claims to lands in various parts of the country, he managed to embroil himself in numerous controversies. He wore his hair and beard uncut, assumed an austerity of manner, and affected a peculiarity of speech that gave him some countenance with the ignorant, but Mr. Hardin regarded him as an impostor, who was more knave than fool. He was sometimes engaged in law-suits to which Jones was a party, but almost always adversely to him, and on such occasions he invariably handled him without gloves. Jones prosecuted an appeal from an adverse decision in one of these cases to the Court of Appeals, and Mr. Hardin attended in person to argue it. Jones was also present. Meeting Mr. Hardin: "Friend Benjamin," says he, "I know thou art a severe man in thy speech, but I wish to give thee liberty to be as severe with me as thou pleasest, for I verily believe it will be good for my soul." Mr. Hardin replied that he would do his best to help him in that way. The case was called, and the argument begun. After disposing of the facts and law, Mr. Hardin began his task of ameliorating the condition of Live-Forever's soul. He cut and slashed and tore and macerated his victim, who, now and then, emitted a resigned groan. To such immoderate length did he go, that the court, at the instance of opposing counsel, finally interrupted him with the admonition that he was exceeding all the bounds of legitimate debate. "If your honors please, I am well aware of that," was the response, "but what I have been saying has been with the entire approval of the appellant himself, who is now present—isn't that so, Mr. Jones?" (turning to the latter).

"Yea, yea, friend Benjamin, yea, yea, but still thou art very severe."

Live-Forever Jones survived the late civil war, and, after a life of privation, died in extreme old age.*

A skillful lawyer always carefully explores the popular pulse where public sentiment promises to be a factor in the conviction or acquittal of his client. That Mr. Hardin neglected no precaution of this kind the following incident will serve to illustrate: Although Cy Hultz was always his client, Mr. Hardin regarded him as one of the worst of men. Between the laws of the land and Cy there was an irrepres-

*He died in the city hospital at Louisville about 1870, and was buried in the edge of Jefferson county, by the side of his brother, Laban Jones, known as the "bleating preacher."

sible conflict. His misdoings had become notorious, and he had escaped the clutches of the law so often that public sentiment finally rallied and demanded that something be done with him. At last, Hultz added another to his catalogue of "crimes, misdemeanors, and breaches of the penal laws," by shooting one of his fellow-citizens. Death did not ensue, but an outraged public demanded that the law should inflict the most condign punishment on the offender. Mr. Hardin was again retained for the defense. "He did not give bail," said Mr. Hardin, "and I did not want him to do so, preferring that he should remain in jail. For awhile, every time he was brought out I would walk with him. I found that there was a strong prejudice against him, rendering it necessary that I should get a continuance. After lying in jail for two winters, and becoming frost-bitten, he was brought out in the spring, and as we passed along I could hear the people saying, 'Poor Cy, he has suffered enough, God knows —and besides, he fought the British, too,' and similar expressions of commiseration. Said I, 'Cy, now is the time; I shall clear you now.' The trial came on, and the jury, after five minutes deliberation, declared him 'not guilty.'"

It is not to be denied that in his arguments to the jury, Mr. Hardin sometimes, as the lawyers phrase it, "got out of the record," or in other words, stated facts not mentioned by the witnesses, and based arguments upon them. These outside facts he would manage to get before the jury in such shape that that tribunal could not be induced to disregard them. In vain might opposing counsel object, and equally in vain would the court admonish the jury to be governed by the evidence only, for so thoroughly would belief be fixed that the jury were morally incapable of resisting their force. The following case is a happy illustration of Mr. Hardin's peculiar ability in the direction indicated.

The prosecution against Brashear for disturbance of religious worship had its origin in peculiar circumstances. The defendant was an elderly bachelor of considerable estate, residing not far from West Point. He was not a religious man, but was generous in aiding public enterprises, and had been one of the largest contributors to the erection of a church not far from where he resided. On one occasion, Rev. Moses Akin, a protestant minister—who was at different times a member of more than one denomination in his day—commenced a series of meetings in that church, with a view of reviving the work of the Lord. Akin was famous as a revivalist. He was of giant pro-

portions physically, yet, notwithstanding his great size, he could, on proper occasion, manifest a meekness, gentleness, and a lamb-like spirit that could be reconciled with no other theory than that he had been the subject of divine grace. He had a powerful, yet somewhat pleasing, oratory, the effect of which was not a little augmented by his personal magnetism. Although by no means a learned man, to strong common sense he added no little shrewdness and cunning, as well as a most excellent knowledge of human nature. To great physical strength he added abundant courage. He was of good address, and it took him but a short while in a community where he was little known to win with the Christian portion thereof reputation for great sanctity. Brother Akin was from Green county, and in the region where he was best known, so many stories of conduct inconsistent with his religious professions had currency, that as a prophet he was sadly without honor.

Now, while the meeting had begun under the most auspicious circumstances, and the religious people regarded the words of the reverend brother as those of a teacher in Zion, yet there were gainsaying persons who repeated those naughty Green county stories. Among this latter class was the defendant Brashear. It was not long before it came to the ears of the preacher that thus and so was being said, and that Brashear was one of those who said it. The latter intimated that the public was being imposed on by a wolf in sheep's clothing, whose purposes were neither Christian-like nor honorable. Curiosity or some other less commendable feeling prompted the defendant to attend worship on one occasion. Brother Akin that day shaped his discourse so as to have a personal bearing on the spiritual condition of the unrepentant Brashear. After the services ended, and as the congregation was dispersing, Akin accosted the latter and requested a private interview at his apartment near by. Reaching and entering the room, the preacher locked the door, and informed his guest that he had brought him there to pray with him, and requested him to kneel. Brashear declined his prayers, and refused to kneel. The preacher told him that if he persisted in his refusal, he would have to whip him, which he should regret. Brashear, although a man of courage, realized that resistance with such an antagonist was useless, and so complied, and under these peculiar circumstances Akin prayed for him most fervently, after which he allowed him to depart.

The following day, as the congregation was assembling, it was not a little astonished to see Brashear seated in the pulpit. There he

sat, apparently having no other thought than observing the congregation as it entered the door at the farther end of the building. While the people were puzzled to understand this strange conduct, yet their respect for a worthy citizen caused them to suppose that timely explanation would be made. At length the sanctimonious parson, with bowed head and absorbed air, entered and advanced with long strides toward the pulpit. Suddenly the quiet Brashear sprang to his feet, and presenting a double-barrel shotgun, halted the minister, and told him that he would regret to shoot him, but would certainly do so, unless he immediately got out of that church. There was that in the manner of his assailant that forbade parley, so turning on his heel, Akin silently walked out, followed by an agitated congregation.

Out of this simple transaction arose the prosecution for disturbing religious worship. Mr. Hardin was retained for the defense, and in due time, the trial came on. Akin himself not being a witness, and the defendant not being permitted to testify, the affair of being "prayed for" was not given in evidence. A serious case, consequently, was made out by the prosecution. Mr. Hardin began his argument with the statement that he had never been employed in a case more entirely to his own heart than the present. He had known the defendant all his life, and while making no hypocritical professions of being better than other men, yet he was known by the whole community to be a man of the most scrupulous personal honor. He was a good citizen, a good neighbor, and a good man. He had given substantial encouragement to all public enterprises, and the poor never had a better friend. He was an honest man, a brave man, and of scrupulous veracity in his every utterance.

He thereupon proceeded to recite the transaction of the defendant being "prayed for." Just as he had concluded it, the attorney for the prosecution objected, because nothing of all that was in evidence.

"What counsel suggests is very true, gentlemen of the jury," said Mr. Hardin, "and, of course, you will not regard the statement as to that affair as evidence, but I repeat it to you precisely as I received it from my client, and I would be willing to stake my soul's eternal salvation on the truth of every word of it, and, knowing the defendant personally as you all do, you can not for an instant doubt his veracity."

Being again interrupted, he assured counsel and the court that he was doing his best to keep inside the evidence, but so entirely was he

satisfied of the truth of everything his client had communicated, that he found difficulty in avoiding allusion to it. He next turned his attention to the preacher in the case.

"Who, gentlemen of the jury," said he, "who is Moses Akin? There is no man who has greater respect for the religion of Jesus Christ than I have, and no one who feels greater reverence for its worthy ministers than I do, but for these wolves in sheep's clothing—for these creatures who 'steal the livery of heaven to serve the devil in'—for such men as Moses Akin I feel that I have not sufficient descriptive powers to do the subject justice. I know him, gentlemen; have known him for years, and know him well. What I am about to say is not evidence, and I warn you not to consider it as such. You may search the pages of sacred and profane history in vain to find an example of licentiousness that can approximate this man Moses Akin. Go with me during any spring to Green county, and I will show you this canting hypocrite in his true character. I will show him to you, as I am reliably informed he has been often seen, capering around in the woods on the waters of Brush creek, arrayed as Adam was before the fall, for the diversion of certain parties of the same faith and order then and there assembled."

Being again interrupted, he begged pardon of the court if he had said anything that was improper, but the fact was, that when he found how this man Akin had imposed on a confiding community under the guise of a preacher for the manifest purpose of practicing his licentious arts on its wives and daughters he felt so indignant that it was impossible to restrain his feelings. In view of all the surroundings of the case (he continued), he regarded any argument of it superfluous, as he had no doubt the jury shared the indignation he felt, and so he would trust his client's case with them. The jury readily brought in a verdict of acquittal.

Ordinarily, it was in vain that client, adversary, or witness attempted to deceive Mr. Hardin. His judgment of human nature rarely erred, but he was sometimes imposed upon. The following incident will very strongly show how it is sometimes better to tell an unpleasant and damaging truth than the most adroit falsehood:

Mr. Hardin defended the Watsons (father and son) for killing Coffman and Courtney. This murder was committed in the "Level Woods," of Larue county. Coffman and Courtney were found dead in the forest from gunshot wounds. The evidence against the Watsons was entirely circumstantial—the chief link of which was finding in possession of one of the prisoners a piece of cloth from which was

cut a bullet-patching found near the dead men. The elder Watson was convicted and executed. The younger was released on bail, and after the conviction of his father fled the country. Although, subsequently, convinced of the guilt of both, Mr. Hardin said he could have so managed as to prevent conviction if he had not been misled by the elder Watson's assertions of innocence. He practiced the case on that theory alone, and was wholly unprepared to meet or parry the facts showing guilt, which he thought he could have done if he had known it to be necessary.

It sometimes happened to Mr. Hardin, as it has happened to all the members of the worthy guild to which he belonged, that he had a bad case. As death approaches, nature kindly blinds the faculties and dulls the sensibilities. Similarly, the lawyer with the most wretched of bad cases, is usually blissfully unconscious of his dilemma and the shock of defeat only arouses him for the first time to absolute consciousness. When hard beset in a bad case, few were better supplied with expedients than Mr. Hardin. If the contemplation of his own side of the case afforded no consolation, he carefully inspected that of his adversary, and took pleasure in ridiculing the very strength of the latter.

R—— was a young lawyer at Bardstown, who had been employed by his uncle to bring an ejectment suit against a mere "squatter," who, without any sort of claim had entered upon his land. R—— was inexperienced and diffident. The case was called for trial, and Mr. Hardin announced that he appeared for defendant. The plaintiff was wholly unprepared to prove title, nevertheless, the trial proceeded. Plaintiff's case was stated by his counsel. He explained to the jury that the defendant had entered on the land with no claim of right, whatever. He did not claim to have bought it from any one or to have paid anything for it. He then proceeded to state how plaintiff had derived title by grant from the Commonwealth to those under whom he claimed and by subsequent regular conveyances. When Mr. Hardin came to reply, he said: "The gentleman is mistaken in supposing that defendant does not claim title to the land. On the contrary, he does claim title. It was true he did not have a paper title, like plaintiff pretended to have, but which he would not be able to show, but defendant traced his title to a far higher source. He claimed title direct from Almighty God." As plaintiff failed to make out a case, Mr. Hardin's client was not called on to exhibit his title papers.

"I first heard Mr. Hardin argue a case before Chancellor Bibb, at Louisville," said the late Andrew J. Ballard. "Hite and Ferguson were names involved in the controversy. He was notably clear in presenting his side of the case. Occasionally his remarks assumed a humorous character. I recall an anecdote he used to illustrate a point in argument. A farmer had rented land to a tenant to cultivate in corn. After the corn matured, the landlord suggested a division, that the tenant gather it, and, retaining every two loads himself, deliver the third to him, the agreement being that the landlord was entitled to a third of the crop for rent. Sometime afterward the landlord, receiving no corn, called on the tenant to know the cause of failure. The tenant explained that when he came to gather the corn, that there was only two-thirds of a crop, so none was left for the landlord."

The gentleman alluded to in the following incident yet lives, wearing years and honors alike gracefully:

"The first time I ever saw Ben Hardin," says Attorney-General Garland, "was, as I now remember, in February or March, 1847, at the trial of Wilson for killing Pottinger, in the Nelson circuit court—Mr. Hardin, with others, being for defense. The trial was an interesting one, both Wilson and Pottinger having many friends and relations of influence. It lasted several days. Mr. Hardin, as leading counsel, made a powerful speech. Clement S. Hill, of Lebanon, was retained to prosecute, and he closed the case with one of the finest speeches to which I ever listened. After he had finished, his friends most warmly congratulated him on his effort. At this juncture, Mr. Hardin came up and said: 'Clem, d—n it, I knew you *could* do it, but I did not think you had the audacity to do it.'"

Mr. Hardin, when the notion seized him, could lay aside dignity, and impersonate any character he chose. Garrick had not greater art in personal transformation. His mimetic and histrionic powers would have assured him success and renown in another sphere than the law. The reader is indebted to Governor William Johnson, of Bardstown, for an illustration of this trait. Mr. Hardin appeared for defendant in an action of detinue, involving title to some corn, in which Thomas W. Riley and William R. Grigsby represented the plaintiff. The case turned on the testimony of a single witness, one W——, who manifested an extreme willingness to aid the plaintiff. On the conclusion of the plaintiff's testimony, Mr. Hardin moved a *non suit*, on the ground that plaintiff had failed to prove demand. The point was well taken, but plaintiff's counsel besought the court

to open the case again, as they were, as they said, prepared to prove demand by the witness who had already testified, and that his failure to so testify had been through their own oversight. This Mr. Hardin strenuously resisted, insisting that W—— had shown a willingness to recklessly testify to anything for the plaintiff, and should not be heard again. While plaintiff's counsel prolonged the debate, the witness himself unconsciously manifested his interest in the result by hanging over the bar, with fixed gaze and gaping mouth, an attentive listener to all that transpired. Mr. Hardin, from his seat within the bar, discovering this, turned his eyes to the witness and gazed at him with such intentness as to excite general attention. The eyes of the witness finally met those of Mr. Hardin, and for a few moments it seemed a contest as to which should look most searchingly at the other. An amused feeling began to steal over the spectators, when suddenly Mr. Hardin's eyes took on an idiotic expression that seemed more than ever to puzzle his competitor. At this point, Mr. Hardin sprang to his feet, and offering his hand to the astonished witness still more astonished him, and at the same time convulsed the spectators, by the cordiality of his greeting—"Good morning, Mr. W——!"

The *non suit* was granted.

CHAPTER XXX.

THE CŒUR DE LION OF REFORM.

THE first Constitution of Kentucky was framed in 1792, the year she was received into the sisterhood of States. It was soon discovered to be decidedly defective, and to contain provisions exceedingly obnoxious to public sentiment. Among other things, it allowed free negroes to vote, which of itself was sufficient, according to the opinion of that day and long afterward, to warrant a new one. But other defects existed of a more substantial character. In 1799, after an exciting struggle, a convention was called and the second Constitution adopted. It continued the fundamental law for fifty years. It had not been long in force, however, before reformers proposed another or a revision of the one existing. As early as 1803 a member of the Legislature moved the subject of calling a constitutional convention, but the motion met with no favor, and did not even receive a second.

"I was myself," said Mr. Hardin in a public speech in 1850 at Frankfort, "one of your representatives in one house or the other during a period commencing in 1810 and ending in 1833. I have no doubt that during that whole period I voted every year against a bill to take the sense of the people on the proposition to call a convention." The efforts for a convention did not cease after 1833. In 1838 the Legislature, at length, submitted the question to a vote. There is no doubt that the result of the Old and New Court contest in 1825 had imparted fresh vigor to the constitutional reformers of that period. If a Legislature was impotent to remove obnoxious members of a court, not so (it was argued) was the strong arm of a constitutional convention. "Sir," said Charles A. Wickliffe in a speech in 1837, opposing this proposition, "this convention project, disguise it as you may, is the warfare commenced in 1824 against the independence of the judiciary."

Indeed, the chief argument for constitutional change in 1838 was to deprive the judges of their irresponsible life tenure by making them elective by the people. Objections were made to the county court system; to the life tenure of sheriffs, clerks, etc.; to the uncertainty

of succession, if the governor and lieutenant-governor both died in office; the location of the seat of government at Frankfort—but, after all, the chief grievance was the "irresponsible" judiciary. The result of the vote in 1838 was overwhelmingly against the convention. The New Court party before that time had become the Democratic party. The Democratic party in turn had become the party of constitutional reform. From 1838 to 1847 the State was divided into two great parties—Whig and Democratic. The former maintained its uninterrupted ascendancy in State affairs. It regularly elected the governor and maintained a working majority in both houses of the Legislature. Under the Constitution of 1799 nearly all offices of honor and profit in the State were appointive, either by the governor, by and with the advice and consent of the Senate, or by those whom the governor appointed. These appointments fell exclusively on the faithful. The Whig was the office-holding party of the State, and undoubtedly came to regard itself as having prescriptive rights, which it was little less than audacious for a Democrat to contest.

But the Democratic party did not despair. Despite local defeat, yet in national elections it was more fortunate. Federal patronage was some solace for State proscription. It was in the minority, but a reliable and respectable minority. It was diligent, well-disciplined, compact, strong in its convictions, and moved with the unfaltering courage of a Roman legion. Defeated, routed, and overwhelmed at the polls, each individual Democrat came to the next election just as surely as the polls were opened. The Whigs blundered, as the strong always will, and the Democrats meekly made all the profit possible out of the blunders. The long proscription of Democrats as to State offices at length worked like a leaven. In some communities the only eminently qualified persons for important offices were Democrats. But these were always passed by for incompetent Whigs.

Mr. Hardin, prophetically foreseeing the end, besought Governor Owsley to bestow offices only for meritorious qualifications. Hardin was the civil service reformer of his time, but his warnings were unheeded. All the while down to 1847, the Democratic party had held fast to its theory of constitutional reform—to the principle that all offices, legislative, executive, ministerial, and judicial, should be elective by the people—that power ought to rest in each local community to choose the rulers who managed its affairs, and that officers were the servants of the people and should be immediately responsible as such. In 1847, the constitution of 1799 was neither better nor

worse than it had been. It still kept the Whigs in power and the Democrats out. The governor, William Owsley, a man of integrity and long experience in affairs, was conducting government on the plan of his predecessors. How long this auspicious condition of things might have continued it is difficult to conjecture. But an event occurred in this year (the breach between Governor Owsley and Mr. Hardin, his secretary of State, narrated in a previous chapter) that was pregnant with results. It was suddenly developed that the governor was unpopular—that he had used his office for the benefit of his family—that too much power was centered in his hands, and thus one more argument for constitutional reform was evolved. All other reasons had been rejected as inadequate. This final one proved to be the missing quantity sought, which, added to the others, completed the demonstration. But more important than all this, the event referred to developed a leader of constitutional reform, without whom its success had still been uncertain. That leader was Mr. Hardin. Whether he acted from motives of pique and revenge, as was charged, or from a desire to crown the labors of his life by furnishing his State with a better form of government, as he often and earnestly asserted, matters not to posterity. In his Owsley speech (delivered January, 1847) he, for the first time, perhaps, publicly announced his alliance with the reform party.

"I now tell Governor Owsley, beware how you portion your children and your connections with the offices that belong to the people. They will not tamely submit; they will rouse up in their majesty and assert their power. In monarchies, oppressions on the people when they can bear them no longer are resisted, and revolutions follow, as the history of most of the governments of Europe proves. In republics, the remedy is a resort to first principles to purify the government when inordinate abuses creep in. Power is always stealing from the many to the few. The Almighty has told us what to do in such a case by His own example. He sends winds and tides to purify the waters of the sea; He sends winds, rains, and thunderstorms to purify the air. So a convention will purify the foul political atmosphere in Kentucky. That is the remedy, and nothing but this will do. We, gentlemen, who are for a convention, ought to rouse up, when we look at the extravagant claims and pretensions of Governor Owsley, and when we see the public offices taken from more deserving men and given in marriage portions to the governor's daughter, grandson, and others of the connection. I am tired of treading these ways. A remedy—and that quickly—must be applied."

He was heralded by the convention party as the Cœur de Lion of reform. He recognized his position and accepted its responsibility. While the more discerning opponents of the convention and its labors freely acknowledged his leadership and its effect, others denied that theory of accounting for events. The partisan Whig anxiously sought some other reason for the convention scheme than the true one, as that was an implied condemnation both of the form of the government and the mode of its administration. The following from the pen of a contemporaneous writer is a specimen of the views of the class alluded to:

"The plain history of the call of the convention is this: The party in the minority (the Democrats) originated the call in order to gain strength thereby. Having nothing to lose and everything to gain by a revolution, it was a measure of party tactics not without its merits. The majority party (the Whigs) fearing to lose strength by making the issue, though really in the main content with things as they were—and adverse to the project, were compelled, as they supposed, to apparently patronize the new movement or lose ground with the people. Thus a rivalry of zeal between the two contending parties for popular favor, rushed the movement through the two votings for a call of a convention. The minority then finding themselves out-hurrahed on the question, had to cast about for some other issue on which to stake themselves.

"It so happened that in the various projects for reform, a small party (the Emancipationists) inconsiderable in numbers, but attracting notice by their zeal, learning, and respectability, had mooted the question of a provision in the Constitution for limiting the existence of slavery in the Commonwealth. And it so happened, furthermore, that this party was supposed to have their political sympathy with the majority party. And it so happened, finally, that at this very juncture, this same question of slavery had forced itself up as a party issue in national affairs, and was likely to become a matter of intense sectional excitement between the North and the South. The opportunity for manufacturing capital was too favorable to be lost. Forthwith the minority magnified the little Emancipation party into an immense host, threatening danger to the Commonwealth, and threw themselves forward as the peculiar champions of the slaveholding interest, calling upon all who regarded the welfare of the State to lay aside all party predilections and unite against the common foe. The majority, again afraid to give their adversary this advantageous position in the popular eye, once more unwillingly entered the race for 'Buncombe,' and by one of those singular delusions which sometimes overtake parties, actually rushed into a league with their adversary, though having everything to lose, in order to make this sham fight with the imaginary common enemy. All the maneuvers of a militia training day were gone through with in due form, and a victory for the mighty allies

was announced—a victory over an enemy that, alas, had not been able to bring a corporal's guard into the field. Apart from party considerations, I very much doubt whether a majority of the people were in favor of a convention at all, at this particular juncture."

Much of what this writer says is true, yet he evidently failed fully to comprehend the situation. He omits many of the important factors whose aggregate produced the call of the convention. The annexation of Texas and the consequent war with Mexico were Democratic measures prominent at that particular period. So far from opposing, the Whigs of Kentucky generally fell into line with the Democrats on these questions. The annexation of Texas meant the extension of the area of slave territory. To oppose annexation was to join the enemies of slavery. Whigs and Democrats of Kentucky alike, shrank from such an attitude, thus involuntarily occupying common ground. Still another circumstance of the time powerfully influenced the coalition of parties. Hostilities with Mexico were at their height. The flower of Kentucky youth was sharing with General Taylor the fortunes of war. The gales from the south-west brought tidings of a series of victories unexampled in all the annals of history. The heroism of Kentuckians in the field filled the bosoms of Kentuckians at home with a degree of pride no language could express. The story, also, came how Whig officers and Democratic privates vied with each other in deeds of daring, and mingled their blood on every field where their country had an enemy. For the time being, partisan differences were forgotten. The people experienced an exaltation of spirit. They saw with a clearer vision. Party shackles being loosened, they felt a fresh influx of the spirit of patriotism. They were in a happy frame to apprehend the argument for constitutional reform. It was no answer now to say that it was a New Court project. To seek to discredit it by calling it a Democratic scheme was to insult the dead heroes on the fresh battlefields of Mexico. There was really no alternative but to meet the reform question on its merits.

In 1847 and 1848 respectively, addresses were published by members of the Legislature and other prominent citizens favorable to a convention setting forth objections to the old Constitution and proposing alterations. The first of these was signed by Mr. Hardin. The following is the summary of the one published in 1848:

First: It was asserted that the old Constitution was defective in regulating the apportionment of representation.

Second: Biennial instead of annual sessions of the Legislature were recommended.

Third: Provision was to be made for the exigency in case of the deaths of both the governor and lieutenant-governor.

Fourth: The powers of the governor were to be curtailed.

Fifth: The mode of selecting sheriffs, clerks, and justices of the peace was to be changed, their terms limited, and the sale of offices prohibited.

Sixth: Judges were to be made amenable to a practical responsibility.

Seventh: The mode of amending the fundamental law was to be simplified.

Eighth: The power of the Legislature to create a State debt was to be limited.

Ninth: The government belonged to the people, and so should its offices. The chances for obtaining them were to be equal.

Mr. Hardin worked actively for the success of the convention movement by counsel and speech. He threw his soul into the contest, spreading enthusiasm among its supporters, and increased their numbers wherever he went. None of the many public addresses made by him on this subject, at this period, have been preserved. It is not difficult, however, to gather the reasons that actuated him and that he urged upon the people. "One reason, among others," said he, "why I struck for a convention was the practice of the governor of Kentucky in filling all the offices with none but Whigs. I believe the offices should be distributed without reference to politics. We are a government of the people. In all our operations the government is based upon the hypothesis that the people are competent to govern; and if competent, how are they competent? Why, by majorities; and every government of a minority is a tyranny, call it by what name you will. We know that the State has been scandalized by the sale of offices. In two-thirds of the cases, the clerks of the circuit courts have bought their offices.

"Where are you to vest the appointing power? In the courts? Do we not know that it is a general practice for them to select the members of their own families for these offices? Such is my observation. Is it to remain with the governor, when we have seen how it has been exercised during the last ten or fifteen years? Shall the members of the House of Representatives appoint State offices? Surely not, for it would be a source of outrageous corruption."

Mr. Hardin's faculty for invective, epithet, and ridicule was not idle. The advocates of a convention were called radicals—the mob—and Jacobins, by their opponents. On the latter were retorted "officeholders" and "Old Hunkers."

"I understand," said Hardin, "the old hunkers to be those who hold on to office until God takes them away, and as Jefferson said, 'they scarcely ever die.' How long may a man hold on to office? Fifty or sixty years I suppose. I know men who, by themselves or vendees, been in office sixty years, and are now precisely like old Brother Dobson. Dobson is represented as a handsome young man, married at the age of twenty-one. On the night of the wedding, there was a knocking at the door. A servant went and came back and told him that a stranger wished to see him. Dobson went and inquired who he was and what he wanted. The stranger replied, 'I am Death, and I have come for you.' 'My God,' said Dobson, 'you have called out of time.' Said Death, 'I know I have called in rather a bad time, I will wait a little.' In sixty years he came again, and again he was asked what he wanted. And he replied, 'I have come for you, Mr. Dobson.' 'Good God,' said Dobson, 'have you come; I did not expect you so soon as this.' So it is with the officers."

Although in 1847 and 1848 Mr. Hardin was engaged in large practice, yet measures of reform were the chief subjects of his thought and labor. To his zeal, skill, and wisdom was largely due the unanimity that attended the convention movement. The contest throughout the State proved an exciting one. It was the absorbing issue in the legislative canvass each year. A chief cry of the reformers was that the new constitution would give the poor man's son equal chance for office with the son of his rich neighbor; that it practically made all men equal in fact as well as in theory. The minority stood up manfully for the constitution of their fathers, but all in vain. The people were ripe for organic reform, and all opposition was overwhelmed. The vote on the question resulted as follows: In 1847, out of 136,945 votes in the State, there were cast for the convention 92,639; in 1848, out of 139,922, there were cast for the convention 101,838 votes. At that time the number of counties in the State was one hundred. Of this number, ninety gave a majority for the convention in 1847. The ten opposing counties were as follows: Bourbon, Boyle, Casey, Fayette, Henderson, Marion, Pendleton, Rockcastle, Scott, and Woodford. In 1848, there were but three opposing counties—Boyle, Green, and Scott. The result altogether was an instance of unanimity on the part of the people without a known parallel in the history of the State.

CHAPTER XXXI.

THE CONSTITUTIONAL CONVENTION OF 1849.

THE chief events that stirred the Commonwealth of Kentucky in 1849 may be thus summarized: First: The call of a constitutional convention in January by legislative act pursuant to the votes of the two preceding years. Second: The animated campaign for seats in that body, and the election of delegates in August. Third: The meeting of the convention in October, and the work it performed.

Undoubtedly, the great preponderance of the talent of the State was embraced among those who had favored the convention. Nevertheless, the minority, though small in numbers, was eminently respectable in character and ability. The struggle for seats in the convention was within, rather than without, the ranks of its friends. The latter, however, were at issue on a variety of questions. The chief controversy was, as to the extension of the elective principle. A great number, actuated by interest, education, or opinion, opposed entrusting the people with the unrestricted right to choose their rulers. As the event proved, the great majority held an opposite view. Yet many of this majority, while in favor of making all ministerial and executive offices elective, doubted the wisdom of choosing the judiciary by the popular voice.

The original constitutional reform party, true to its teaching for the preceding quarter of a century, was, in the main, in favor of making all officers responsible to the people. The difference arose as to the means by which to secure responsibility. All agreed that offices should be held for limited terms. As to the judges of the courts, some favored their appointment by the Legislature; others, that they should be chosen directly by the people. So heated did the controversy on this question become, that some of the early and able friends of constitutional reform were estranged before that work was accomplished.

A few favored what, in the parlance of the day, was called "the open clause." These desired a constitution so framed as to impose as little obstruction as might be to the emancipation of slaves whenever

the people should favor such a scheme. Those holding this view were denominated "emancipationists." The friends of slavery bitterly opposed the "open clause," and, on the contrary, insisted that special guarantees should be inserted for the security of slave property. These must be taken as illustrative examples of the issues in the campaign for the election of delegates.

Nelson county was entitled to two members in the convention. For these honors Charles A. Wickliffe, William R. Grigsby, and Mr. Hardin were contestants. Wickliffe was a Democrat, while his competitors were Whigs. Nelson was in sentiment decidedly a Whig county, but so disjointed were the times that former party affiliations afforded uncertain assurance of results. Although not entertaining, or at least not expressing, such sentiments at the outset, yet while a candidate for delegate, Mr. Hardin took ultra ground in regard to the extension of the elective principle. As had always been his custom when seeking popular favor, he made frequent addresses to the people, and engaged in public debate with those differing from himself on pending questions. While laboring in surrounding counties, he was wise enough not to neglect what was necessary at home to secure success. He was resolved not to miss the opportunity of helping complete the work his efforts had so largely contributed to inaugurate. The Democrats rallied to Wickliffe's support, and were ready to give their second vote to Hardin or Grigsby, as might best promote the interest of their own candidate.

Hon. A. H. Garland, at the time a student at St. Joseph's college, was an interested observer of the canvass, and thus entertainingly alludes to it:

"In the canvass for the seats in the constitutional convention of 1849, Mr. Hardin, Charles A. Wickliffe, and William R. Grigsby were candidates in Nelson county. They spoke at some nine or ten places. It being vacation, I rode around after them and heard nearly all their speeches. It was a most magnificent discussion of all the questions of interest of that day to Kentucky. I have often thought it unfortunate that those debates were not reported in full. The parties engaged were all giants.

"Hardin and Wickliffe were elected, but Grigsby came out of the contest with renewed and increased name and honor, losing nothing by his struggle with these two Nestors. At the last speaking, 'Old Ben' (as everybody called him) closed his remarks by saying: 'And if you don't want me to represent you, just remember I will be content to stay at home and practice law at the same old stand at the same rates, where I will be pleased to see you all at any time.'"

On the day before the election, Mr. Hardin took the precaution to visit localities where Democratic voters were numerous and to impress on them the idea that his own election was assured, and that the contest was between Grigsby and Wickliffe. The effect of such a suggestion was obvious.

In Hardin county it was understood that John L. Helm (Mr. Hardin's son-in-law), at that time lieutenant-governor, aspired to a seat in the convention. Thomas D. Brown and James W. Stone were announced candidates, and favored the most liberal extension of the elective franchise. Governor Helm, who had been an early and active friend of the convention, was an outspoken opponent of an elective judiciary. It was characteristic of Mr. Hardin to allow no obstacle to defeat a purpose on which he had once resolved. Much as he admired and highly as he esteemed his talented kinsman, he was unwilling to hazard the scheme for a new constitution or any material element of reform by admitting so skillful and able an opponent as Helm into the convention. Mr. Hardin met Helm in debate at Elizabethtown, and made a speech of such overwhelming effect as to render Governor Helm's election impossible. This caused Tom Marshall afterward to denounce him as the prototype of Saturn, who devoured his own offspring.

JOHN L. HELM.

For the third time in the history of the State a constitutional convention met at Frankfort, October 1, 1849. Proceedings began by a motion of David Merriwether that George W. Johnston be temporary chairman, and Charles C. Kelly, secretary. After a call of delegates, an oath improvised by Mr. Hardin was administered. It was next resolved that the permanent officers of convention should consist of a president, secretary, assistant secretary, sergeant-at-arms, and doorkeeper.

James Guthrie, Democrat, of Louisville, was elected president over Archibald Dixon, Whig, of Henderson, the vote standing as follows: Guthrie, 50; Dixon, 43; Gaither, 1; Davis, 1. The time-honored custom of opening deliberative bodies with religious observ-

ance was neglected until the fifth day of the session, when the late well-known Stuart Robinson offered a morning prayer, and thereafter, each morning a similar service was rendered by the pastors of the various churches at Frankfort—Protestant and Catholic.

The business of the convention was, after some debate, divided among the following standing committees:

First: On the Executive for the State at large.

Second: On the Executive and ministerial offices of counties and districts.

Third: On the Militia.

Fourth: On the Legislative department.

Fifth: On the Court of Appeals.

Sixth: On Circuit Courts.

Seventh: On County Courts.

Eighth: On Miscellaneous provisions.

Ninth: On Revision of the Constitution and slavery.

Tenth: On Education.

Mr. Hardin was appointed chairman of the committee on circuit courts, one of the most important.

Preliminary to some further reference to the proceedings of the convention, it may be interesting to briefly notice the personal aspect of that body and indulge some general allusion to its character. Mr. Hardin said of it: "When I met this convention, I looked around to see what kind of men it was composed of. I have since repeatedly remarked that I have been in many deliberative bodies—ten years in Congress and ten years in the Legislature of the State—yet I think in the whole course of my public life, I have never been associated with a hundred men of more talent, men with whom I am more proud to be associated, than the hundred men that compose this convention."

This was no undeserved eulogy. In the list of members were many who had already achieved national reputation by their talents, and still others who were at the outset of careers that brought them renown. There were colleagues and disciples of the eloquent Clay, as well as his formidable antagonists who had shown themselves worthy to be his foemen on many a well-fought field. It was not merely a body of orators, although as such pre-eminent, but embraced in it were men of sound practical sense, of profound learning, experienced in affairs, and qualified for the philosophic consideration of all the grave details of government.

No one took a more active part in the proceedings of the convention than Mr. Hardin; no one spoke so frequently as he, and none more pertinently, tersely, and effectively. He was the recognized Nestor of that body, and his slightest utterances received respectful attention. In number of speeches Mr. Wickliffe ranks next. The following distinguished names were among the most frequent speakers: Squire Turner, James Guthrie, Beverly L. Clark, Philip Triplett, John W. Stevenson, Richard Apperson, Willis B. Machen, Charles Chambers, William Preston, A. K. and M. P. Marshall, James W. Irvine, Archibald Dixon, Garrett Davis, David Merriwether, and George W. Kavanaugh.

The following delegates either had been, or afterward became, members of Congress: Albert G. Talbott, James S. Chrisman, Philip Triplett, Francis M. Bristow, Ben Hardin, John H. McHenry, Thomas P. Moore, and William Preston. Guthrie, Dixon, Machen, Davis, and Merriwether were subsequently United States senators; Stevenson became both governor and senator; Silas Woodson became governor of Missouri; Preston and Clark filled missions abroad. Others were less distinguished for positions attained, but hardly less so for brilliant talents.

Nothing of any special interest—aside from organization—transpired in the convention until October 4th, when Garrett Davis, of Bourbon, introduced his proposition as to the elective franchise by foreigners, virtually formulating the ideas of the Native American party. When first sprung, the sentiment and probable action of the convention seemed doubtful, but the proposition was laid over for further consideration. This was the first significant event in its proceedings. If Mr. Davis' design had prevailed, it would have united (as he hoped and expected) the Whig and Native American parties. His proposition excluded from the elective franchise all future immigrants, and imposed very stringent conditions on those who were already naturalized.

Upon this important question, the opinions of Democratic members were somewhat unsettled—and these not at all decided against Native Americanism—and the Whigs were less so. This debate acquires importance from the circumstance that it marked a breach in the Whig party between pro-slavery and free-soil Whigs, traces of which were discernible in every contest up to the civil war. Of the Native Americans, Davis was the acknowledged leader, and at one time seemed its probable candidate for the presidency.

The debate on the question was not concluded until toward the close of the session. On that occasion the theory and doctrines of Native Americanism were elaborately stated in a historical and anti-Catholic speech by Mr. Davis, tracing them from the time of Constantine to the foundation of our own government.

There were six Catholic members in the convention, and by agreement of these and other opponents of Davis' resolution, Mr. Preston, of Louisville, was selected to reply. His elaborate, logical, and impassioned speech completely overwhelmed the movers of the resolution. While others participated in the discussion, yet the curious reader will find the whole reasoning, pro and con, on this important and still interesting question in the two speeches of Davis and Preston.* On the vote on December 17th, the resolution was rejected, Davis and five others only voting for it. Mr. Hardin is recorded against it—and yet it has been inferred from some of his arguments on the subject of restricting the representation of cities that he was not hostile to that feature of Native Americanism leveled solely against foreigners. Certain classes of foreigners he regarded unfriendly to slavery, and the immigration of these he would have obstructed. Moreover, it seems he suspected Native Americanism to be a step toward free-soilism and abolitionism, and these he believed the precursors of war, and so broke with all Whigs having those tendencies. This question in some of its aspects was the most important that arose.

Mr. Spalding, a Catholic member, had been exceedingly active in opposing the Davis resolution, and his gratification at its almost unanimous defeat so overcame him when thanking a fellow-member for his services in the matter that he burst into tears.

Another exciting topic was the subject of domestic slavery. The compromises of 1850 were then pending before Congress, and no doubt was felt of the settlement of the questions involved, amicably and wisely, but sagacious and thoughtful men felt convinced that Mr. Clay's beneficent hopes would in another generation amount to nothing, unless a clear, manful, and honest understanding was had between the South and the North as to the true foundation and meaning of the organic law, with a renewal of obligation for its faithful maintenance. Nearly half the property of the Southern States consisted of slaves held under the guarantees of the Constitution. It was foreseen by able statesmen that such a vast amount of wealth could not be annihilated without war, and Northern leaders contended boldly that to pay for emancipated slaves would be a disgrace to the nation and an

* Kentucky Constitutional Debates, pages 1002 and 1017.

affront to humanity. The wisdom of Clay served to allay, for a time, the excitement engendered by these questions. The Whig members of the convention, with few exceptions, placed absolute reliance in the providence, virtue, and courage of this great statesman. While those compromises were without any prospect of fulfillment, yet there were never more manful efforts made by patriots to secure peace. The Democrats were united—the Whigs divided. Of Southern Whigs, Archibald Dixon was most conspicuous in the convention. He was looked to and regarded by the pro-slavery element as their leader on that issue. But he, perhaps, became too zealous an advocate of Southern rights considering the geographical situation of Kentucky, and the breach within her borders, then opening in the Whig party, which, under Clay's leadership, had so long held irresistible power.

Mr. Hardin, while not the least disaffected on the slavery question and quite as intolerant as any, of the political incendiarism and fanaticism that menaced that institution, was yet temperate and conservative in his expressions on the subject. He foresaw the trouble and disaster that then threatened the country, and that within a decade of his own death did ensue, and sincerely, both in speech and action, did what he might to postpone the evil day.

In the course of its deliberations, the convention considered and debated nearly every important principle of government. A full list of the questions discussed, much less the briefest review, would be beyond the limits assigned the subject in this work. These debates were not only marked by a patriotic zeal, but also by a temper exceedingly favorable to the just solution of constitutional problems. As a rule, they were masterly, exhaustive, and eloquent. The criticism of Mr. Bristow, that "every question ran into slavery or cities," was not unfounded, but a mitigation of the criticism is found in contemporary circumstances. At that day, great excitement had been engendered throughout the South, and in Kentucky as well, by the agitation of the slavery question. Cities were regarded as hot beds of emancipation. Hence, their frequent association. Slavery, the judiciary, and the extension of the elective franchise were leading topics. The powers of the executive and legislative departments, the appointment and basis of representation, and the mode of taxation were subjects that received a large share of attention.

Mr. Hardin neither sought nor expected any other importance in the convention than such as his talents necessarily gave him. While he was a natural leader, and on many questions actually so in the con-

vention, yet he paid no attention to, and had no regard for, the minor details of leadership. As strongly pro-slavery in his sentiments as many members of that body, yet he took delight in ridiculing some of the positions and arguments of its friends. Asserting the right of the slaveholder to his slave under the law, yet he denied that there was, as some argued, anything divine in its origin. He said the Bible recognized its existence, but did not authorize it. While denying the expediency or justice of interfering with it, yet he disputed with those who said the convention could not interfere. When he had, what he deemed, a sound argument for his position on any subject, he scorned the aid of all sophistry. Herein he differed from the thorough-paced leader—ever ready to permit his followers to choose their own reasons for their action, content if they are faithful to the common end, however illogically attained.

Said Mr. Hardin: "I have been about half my life in parliamentary bodies, but have never expected elevation to the chair of speaker, or even that of chairman of committee of the whole. I know as little about parliamentary rules as almost any other man." He valued the privileges of a free lance above all the official honors of a deliberative body. Notwithstanding he thus depreciated his parliamentary knowledge, yet he was successful in catching the speaker's eye whenever he desired.

He entered the convention thoroughly imbued with the popular ideas in which it had its origin. He manifested at all times a zeal for the success of its labors. Not unfrequently he reminded it of the purpose for which it had assembled. In its early days he observed:

"We came here with a view of making three or four essential changes in our organic law. One is to take the appointing power from the executive and give it to the people; and another is to destroy the life tenure of office, because the holders of offices for life, or during good behavior, are virtually under no responsibility whatever—the tenure of office being in the nature of a life estate. As Jefferson well said, 'they never resign and scarcely ever die.' Another object is to make the holders of office more immediately responsible to the people; and another object—one which I had particularly in view, although I do not know how it is with other gentlemen—was to prevent the State from contracting any more of those enormous debts, which we have been in the habit of doing. When we have done these things we have attained the great purposes for which we assembled."

Mr. Hardin has been pronounced a radical on the extension of the elective franchise. He had studied the proceedings of the New

York convention, of a few years before, and had become thoroughly imbued with the principles that prevailed in that body on the subject. Favoring the application of the elective principle to all offices, yet he insisted on tests of qualification as to those requiring skill and learning. Clerks, he urged, should have certificates, and judges should be lawyers of experience.

"I think it a very valuable requisition," said he, "to say to a man who comes forward as a candidate: You shall have a testimonial of your qualification, and you shall not be elected because you are a successful demagogue on the stump. I am greatly in favor of throwing back all power to where it originally belonged, but let us not run the thing too far."

Another restriction of the elective principle was the doctrine of ineligibility to a second term, which he insisted should apply to many offices, especially to those where official position might be used to secure re-election:

"Nothing in the world so purifies the political atmosphere as rotation in office. What was the principle that fostered the growth of the Roman republic, until from a single small city, it grew to a power that overran the world? It was rotation in office—that any man who filled an office one year should be ineligible the next. That principle was first broken in upon by Caius Marius, and from that day may be dated the beginning of the downfall of the Roman republic. You purge your political atmosphere by rotation in office."

He was persistent and constant in advocating that the majority should rule. He earnestly argued that it was the very essence of republicanism. As the business of the convention progressed, he recurred to it again and again.

"There are," said he, "but two kinds of government—but two. Some are called the government of the Grand Turk, some the great emperor of all the Russias, or the emperor of Austria, or King of Prussia, the miserable little Bonaparte, now in Paris, the queen of England, with her royal spouse, or we may go back to the aristocracies that existed in Venice—and in all there are but two kinds. One is that of the minority controlling the majority, and the other is that of the majority controlling its own action. Call it imperial, monarchical, or what you will, there are but two kinds."

He was in advance of his party (the Whigs) on this subject, and was charged with over-zeal and rashness in its advocacy. But this over-zeal, as the sequel proved, had not been without method, and

bore abundant fruit. Says one who witnessed the progress of the convention, day by day: "The Whig party was conservative on the subject of the elective franchise in the outset, but about the middle of the session, there was a general 'break-up,' and the measure for extending the franchise carried overwhelmingly."

Notwithstanding the substantial coalition of all parties on this question, yet the intelligent and free action of the convention was frequently and greatly obstructed because various propositions of reform were classified as Whig or Democratic measures, and thus party lines were continually embarrassing the just consideration of the great principles of government.

Representation and cognate questions produced extended debate, which was not at all times free from acrimony. Especially was the last result true in the debate as to the representation of towns and cities. The proposition to fix a standard beyond which the representation of towns and cities should not be increased, was a discrimination resented with spirit by their delegates. It was argued that to allow them to be represented according to population equally with county districts would give them undue advantage. The under-lying idea in this argument was that towns and cities were not to be trusted on the slavery question. In combating this doctrine, Mr. Preston had referred in eloquent terms to the patriotic conduct of the city of Louisville with reference to the Mexican war, then but recently ended —that city having furnished a body of troops designated as the "Louisville Legion." Replying, Mr. Hardin spoke of the anxiety of Kentuckians to enlist in the army, which was denied to many, because the State's quota was full.

"They had to be drafted out instead of drafted in, said he. I considered it a favor to Louisville, and in that regard she stood forth in place of the balance of the young men of Kentucky. She behaved very handsomely. She had one-fourth of the officers that went from Kentucky, when the balance of the State was in no wise behind. But, sir, when you came to the actual fighting, part of the Louisville regiment was not brought into battle. Three days Monterey was besieged, and there were three days of fighting from daybreak to dark, and yet they did not get into the battle. I have no doubt they were as ready as any men in Kentucky, but why General Taylor did not bring them into action, I do not know, nor will I attempt to guess, for I might guess improperly. One thing I do know, that at the battle of Buena Vista the second regiment of Kentucky was there, and how prettily they came in! Yes, sir, and they bled, too, and caused blood to flow from the

enemy. They were called and will be called for a hundred years to come, 'The blood regiment of Kentucky.' If you go on to the hill here, to the burial place of Kentucky soldiers in the cemetery, you will see some indications of it. I have examined that place, and I did not see the grave of a single soldier from the Louisville Legion. Do not understand me to say that they would not have been as ready as any men in Kentucky, but, I protest against Louisville being put up here between Kentucky and danger, as if she stood for the balance of the State."

This seemingly artless statement of a historical fact drew down on Mr. Hardin the wrath of the Louisville delegation, especially that of the president of the convention. The latter began a long and impassioned speech with the remark that "the elder gentleman from Nelson had seen fit to cast a base and infamous stigma upon the gallantry of the soldiers of Louisville." What followed was in harmony with this initial observation. Mr. Hardin explained:

"Now all I intended to say was—for I said it over and over again—that the Louisville Legion was as brave as any other, but at all events, they had done no fighting. I did not attempt to say, nor do I intend to say, that Taylor distrusted the bravery of the officers or of the men of the Louisville Legion. On the contrary, I said the men were as gallant as any in the service, and at the same time, I said that the second regiment—a regiment that was raised from the body of the State—had covered itself with glory. And it did, sir. I was perfectly astonished when the gentleman broke out into a thundering tone of voice against me on account of what I had said. I recollect thirty years ago there was one Phil Thompson, who was practicing law in the courts of Breckinridge county, and on one occasion, when he commenced a speech in the court-house, the first word he uttered was in a scream like the gentleman from Louisville. The crowd about the street had been accustomed to witness fights, and they all rushed to the spot, thinking a fight was going on. When they found out it was Phil Thompson speaking, 'well, I declare,' said one, 'I did not expect to see him get crabbed so quick. He got mad too soon.' So it was with the gentleman—he got mad too soon.

"I have read somewhere in Josephus, I believe—or if it is not there, it ought to be—that Goliah was born in Askalon, and not in Gath, but he went to Gath, and gave out in speeches that he belonged to the race of Anak. The gentleman was born in the county of Nelson; he was educated at Bardstown—and a good education it was—and he practiced law there, and got a good practice, and finally ran for the Legislature. But we all know, and we have the testimony of Holy Writ to the same effect, that 'a prophet is not without honor save in his own country.' He removed to Louisville, and is now the 'Goliah of Gath.'

"'Why man he doth bestride the narrow world,
Like a Colossus; and we petty men
Walk under his huge legs and peep about,
To find ourselves dishonorable graves.'"

After saying many other things as little adapted to appease the wrath and solace the feelings of the irate president, Mr. Hardin closed with the rather illogical statement that "if he had uttered a word that was disrespectful to the gentleman, from the time he first saw him, when he was a boy, he hoped he might die the death of a sinner."

Perhaps it was not expected that these explanations would be accepted as satisfactory. Certainly they were not. Mr. Guthrie, rejoining, said:

"I have some knowledge of a sneer, and what a sneer is intended for. The gentleman says he did not intend to impugn the valor of the soldiers of Louisville. Yet he said, with a sneer, that no citizen of Louisville was in that battle. I yield to him the palm in sneering. He is in that the peer of all the peers in this land."

Said a gentleman who happened in Frankfort during this tilt between Guthrie and Hardin: "One night my father and I called at Mr. Hardin's room, and the debate was talked about. 'Mac.,' said Hardin to my father, 'did you hear me say anything that could offend Guthrie, or have you any idea what he is mad about?'" It was this pretense of ignorance—a pretense that Hardin enjoyed hugely—that so provoked Mr. Guthrie.

Notwithstanding Mr. Hardin and Mr. Guthrie concurred in favoring a new constitution, otherwise many points of antagonism existed. Politically, they had always been divided. Mr. Hardin's temporary amnesty to democracy did not extend to its leaders, or not fully so. Mr. Guthrie had entered the convention as a leader, and a democratic leader. It was not in Mr. Hardin's nature to share leadership at any time with any one. He had voted for Mr. Dixon for president of the convention against Mr. Guthrie. He questioned Mr. Guthrie's right to first rank among constitutional lawyers. These circumstances concurring with a possible old grudge against Louisville, nerved his arm and furnished motive in this contest with the president of the convention.

On the subject of common schools Mr. Hardin, with his immediate constituency, was in the minority. He opposed constitutional provi-

sion requiring the establishment of such a system. He opposed schools established and maintained by law. One reason for this opposition was, that if incorporated in the new constitution, it would imperil its success. He also thought such a system of education unjust to certain religionists who would patronize no school not conducted by teachers of their own faith. He condemned it as inadequate for purposes of education. Good teachers, he contended, could not be obtained. He admitted it might possibly benefit the towns, but thought it impracticable for rural districts.

"I am confident," he said, "that the country will not approve the system. It may be an advantage to the towns, but it will be a burden to the country, to which they should not, in justice, be asked to yield. The towns should remember the old saying: 'If, when you go to market, you expect to get meat, you must expect to get bones also.' They must expect their share of the inconveniences as well as advantages by living in towns."

Different views prevailed, and educational systems, established by law and maintained at the public cost, have long since met popular approval in town and country.

He urged with great earnestness a restriction on the power of the Legislature to create State debts. In this he was wiser and more successful, and the State has escaped many burdens that otherwise would have oppressed it.

Before 1849, there had been no appeal allowed to the Court of Appeals in felony cases. Mr. Hardin unsuccessfully opposed the proposed provision allowing such appeals. He professed to believe, and, no doubt, sincerely, that innocent men were in no danger of punishment in the inferior courts, and that allowing appeals only increased the chances for the guilty to escape. Indeed, he thought the State at disadvantage in prosecutions in the trial courts. It was through his efforts that the prosecution (formerly entitled to none) was allowed in felony cases, one-fourth as many peremptory challenges to jurors as the prisoner enjoyed.

While some of his views on constitutional questions were overruled by the convention, yet, as its labors drew to a close, none manifested more desire than he, that the new constitution should be adopted by the people. Differences arose as to whether the convention should adopt the new constitution without further action by the people, or should submit it to a vote for ratification or rejection. Mr. Hardin insisted on submitting the question to a vote, and also that the con-

vention should not dissolve until after the result was known. Lengthy debate occurred on these points—and his views were sanctioned by a vote of 56 to 41.

The day following this vote, he said:

"I was unhappy from the day this convention was called until last night. I was afraid all the discordant interests, the emancipationists, the old hunkers, and the old constitution men would combine and raise money, which is the sinews of war, political as well as civil—and that no man would subscribe one dollar for the constitution, and that they would mash it up. A dark cloud hung over our prospects until last night. The lightning seemed to flash, and the thunder to roll; but thank God! it is past and I see the bright sun of Austerlitz now bursting on the people. Yes, sir, the bright sun is shining on us, and as sure as the Lord liveth, we will have a constitution and the people will take it. Where will be the emancipationists? Will they undertake to kill you, friend Merriwether?* Never! They will not be a thorn in your side. Where will be the old hunkers? They will swear they were with us from the first. Where will be the old constitution men? Like the rest of the horses when they ran against 'Flying Childers,' they will be nowhere in the race. We will have an easy time, if we determine to come back here. Did not the world say Sampson was a fool for permitting his hair to be cut off? For what power have we then—not even to kick a dog from our feet—and like a dog, go sneaking home."

The following estimates and comments on some of the leaders of the convention, gathered from various sources, may not be without interest:

Richard Apperson was an excellent and long a successful lawyer of Mt. Sterling.

Alfred Boyd, of Trigg, proved himself an active and useful member.

Francis M. Bristow, of Todd, chairman of the committee on county courts, was a sound and able lawyer, and an important factor in the convention. He was not a brilliant orator, but earnest and forcible, and by reason of integrity and high character, his influence was very great.

In addition to excellent professional attainments, Charles Chambers, of Boone, was pronounced a very sensible man.

Beverly L. Clark, of Simpson (says one biographer), "was learned in the law—and an able and eloquent orator—one of the best in the State." His oratory possessed a magnetic and impassioned quality that caught the popular ear. Of him it was said that in the conven-

*This allusion is to a supposed attempt on the life of Hon. David Merriwether by an "open clause" partisan.

tion he was better at elaborating than breaking the route on any question. He was a leading Democrat, but it has been intimated that he had a quick ear for the suggestions of the younger and Whig delegate from Louisville.

Garrett Davis, of Bourbon, sacrificed his usefulness by becoming the leader of the Native American element, and he did not retrieve himself by taking ground that the right of the master to his slave was above constitutional sanction. He was impetuous and impractical.

Lucius Desha, also of Bourbon, was of limited vocabulary and a prosy speaker, but a good parliamentarian, and had the faculty of drawing, with few words but wonderful vividness, lines of character that he seemed to apprehend with remarkable insight.

Archibald Dixon, of Henderson, was, par excellence, the leader of the Whig party in the convention. He was a man of fine and impressive presence. His knightly bearing and air of high breeding indicated one of nature's nobility. He was a fiery, fluent, and persuasive speaker.

Seleucius Garfield, of Fleming, a Vermonter by birth, was a man of decided talent. In the canvass for delegate, his colleague, Martin P. Marshall, had referred to him on one occasion as the *Yankee pedagogue*, whereat Garfield retorted with such vigor that Marshall was afterward content to let him alone, and it was even suspected a treaty was entered into to secure their joint election, which, indeed, occurred.

Richard D. Gholson, of Ballard, to Whig perception was a demagogue. One says, "he was potential in the 'Purchase' and faithfully followed Hardin." Another: "He was a man of hard, common sense, a good member, though radical on the subject of extending the elective franchise."

James Guthrie, of Louisville, possessed sterling sense, and was more conservative than his party, to which, however, as one of its leaders he was subservient. He was not an orator, but a forcible speaker. He was full of ideas and an earnest thinker. Aside from his official position, his influence in the convention was very considerable.

Mark E. Huston, of Spencer, stood high in the legal profession.

Thomas James, a farmer of Hickman, did credit to himself and the then new "west end," he represented.

George W. Kavanaugh, of Anderson, a good lawyer, was exceedingly clear in his perceptions as to the true principles of government.

Thomas N. Lindsay, of Franklin, fell below the expectation which his known talents had justified.

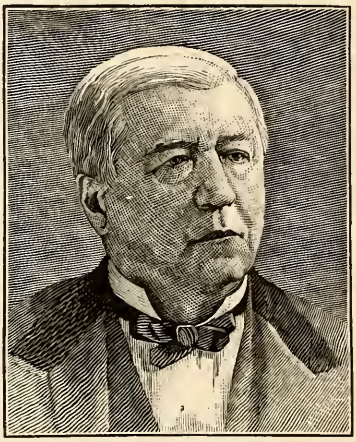
Dr. Alexander K. Marshall, of Jessamine, was of that talented family of which Thomas F. Marshall is best known. Dr. Marshall was a radical Democrat, and though not equal to his brother in culture and genius, possessed strong intelligence.

Martin P. Marshall, of Fleming, was a man of integrity and political sagacity, proved an excellent member, and has been pronounced one of the brainiest in the convention.

Richard L. Mayes, of Graves, was a very strong man intellectually.

John H. McHenry, of Ohio, a kinsman of Mr. Hardin, was of ripe judgment, well-balanced faculties, a clear and vigorous thinker.

Thomas P. Moore, of Mercer, nicknamed "Free Tom," had had considerable legislative and congressional experience, was influential with the Democracy, to which he belonged, but for reasons somewhat conjectural eschewed debate.



JOHN W. STEVENSON.

Elijah F. Nuttall, of Henry, was a singular genius, a warm Democrat, and very whimsical in his opinions. He was ardent in debate, had decided views on all questions, but influenced no one on anything.

Ignatius A. Spalding, of Union (kinsman of the distinguished lawyer and politician of Morganfield, who bears his name), was a typical Kentucky farmer—vigorous, hearty, frank, intelligent, and honest. When Garrett Davis precipitated the Native American issue upon the convention, Mr. Spalding led the opposition.

John W. Stevenson, of Kenton, had not at that time attained his full intellectual maturity, but proved a useful, hard-working member. He was conceded a leading place in the convention, not only for his legal acquirements, but for his well-poised temper and sound and intelligent statesmanship. As a Democrat, he had some difficulty in restraining the impetuosity of his co-partisans within his own conservative views of propriety. When the Green river Democracy, and that of the "Purchase," were inclined to stampede under the incitation of Hardin or Gholson, Stevenson would encounter them

with some scrap of a letter from Washington, Jefferson, Madison, or Monroe with such urbanity that if he did not control them, he gave no offense. It was charged that he could aptly quote from the writings of Mr. Madison, no matter what the question—whether the composition of a custard or the construction of a constitution.

Philip Triplett, of Daviess, was a useful member of the convention, and in harmony with its more conservative aims.

Squire Turner, from Madison—on the line between the bluegrass and the mountains—was very potential, on account of locality, as well as of his marked talents and consummate lawyership.

Silas Woodson, of Knox, was a bright man, and has since abundantly redeemed, by a brilliant career in a sister State, the promise of his early manhood.

Twenty-four members (so far as the report shows) took no part whatever in the debates, and possibly in so doing, acted more wisely than some who were heard "for their much speaking."

"The debates of the convention were taken verbatim," says Colonel John W. Finnell (who had charge of reporting), "but they were very much cut down in the published debates. A full report would have made them intolerably voluminous."

On December 21st, the constitution was completed and the convention adjourned until the first Monday in June, following. Meantime, the product of its labor was assailed with vigor, and as vigorously defended. The most notable debate of that period occurred in the hall of the House of Representatives in January, 1850, between Mr. Hardin and the famous Thomas F. Marshall. They not only dwelt on the merits of the questions involved, but enforced their respective views with a degree of sarcasm, wit invective, and ridicule never before witnessed in the State. This tournament lasted several days. Marshall established a campaign paper at Frankfort, styled the *Old Guard*. The *Old Guard* fiercely attacked the new constitution, of which *The Champion of Reform* was the advocate. Throughout the State, speakers were on the stump, exerting their logic and eloquence for and against the new form of government. No one was more untiring and enthusiastic than Mr. Hardin, and an Ajax he proved himself. As he had predicted, the new constitution was approved by the vote of the people in May, by a decisive majority. To him the result was doubly gratifying. Not only were the principles triumphant, which he had long cherished, but at the close of his career he had crowned the labors of his life with a master-piece.

CHAPTER XXXII.

A PLEA FOR THE CLERGY.

WHEN Virginia formed its first constitution, that instrument contained a provision prohibiting clergymen from seats in its legislative body. The cause of this discrimination may be readily traced to jealousy of the church establishment of colonial times. The Established or Episcopal church had been supported by an annual stipend, levied by authority of the colonial government. Naturally, this levy generated discontent and bad feeling on the part of other religious sects. This burden, and the infliction of legal penalties against dissenters, had produced and intensified the opposition to the union of church and State. The first fruit of these, under Republican rule, was the constitutional inhibition in question. Rev. John L. Waller, in the constitutional convention of 1849, gave the following account of its origin:

"There was some show of an excuse for it, but not the shadow of reason in its justification, when it was first introduced into an American constitution, in that of Virginia, adopted in 1776. That State was then influenced by peculiâr circumstances. Previous to that time, under colonial regulations, the Episcopal church was established there by law. To support the clergy of that church, certain lands, called glebe lands, were appropriated; besides a large stipend in tobacco was annually paid them. This became oppressive. Other denominations of religionists sprang up, who felt unwilling to support a church to which they did not belong, and to whose doctrines they did not subscribe. The law was appealed to by the friends of the establishment. Persecution ensued. My own ancestors suffered severely—were whipped and cast into prison. This odious and persecuting establishment was put down the year that the first Virginia constitution was ordained. The ministers of all other denominations submitted to it quietly, because it debarred their persecutors from office.

"But there was another and more controlling reason for this restriction. The great statesman who drafted that constitution was no friend to religion.* He had tasted and felt the influence of the French philosophy, which just then began to lower upon the brow of the moral firmament, and soon after shrouded in darkest gloom the moral heavens of the civilized world. The great men of the earth, and many of our own statesmen, were enveloped in its

* Thomas Jefferson.

darkness. This philosophy subsequently led its disciples to declare that there was no God, and that death was an eternal sleep. It was, I say, the promptings in part of this philosophy, which first gave birth to this proscription of gospel ministers." †

When in 1792, Kentucky—Virginia's eldest daughter—started on her own account, the disabling clause referred to was dutifully, though without any special rhyme or reason, incorporated into her fundamental law. "No minister of a religious society * * * shall be a member of either house (of the General Assembly) during his continuance to act as a minister." So the provision ran. Again in 1799, when a second constitution was constructed, still more emphatic language was adopted: "No person while he continues to exercise the functions of a clergyman, priest, or teacher of any religious society or sect" * * * shall be eligible as a member of the Legislature. It is not known what discussion, if any, occurred at the adoption of either of these provisions. If any, doubtless the calamity of uniting church and State was a controlling consideration.

When the constitutional convention of 1849 assembled, it was the preponderating sentiment of that body, as well as of the constituency it represented, that Church and State should still be kept separate, and, as an indispensable precaution to effect this vital object, that clergymen should be debarred from taking active part in the conduct of political affairs. The reasons for this sentiment at that day were certainly more imaginary than real. The political sagacity of the priestly Ximenes, Richelieu, and Mazarin has possibly received some adornment from partial historians, and undoubted exaggeration from the facile romancist. Anyway, the clerical profession of modern times is exceedingly barren of types resembling those famous cardinals. A political preacher —with due reverence be it said—is most usually a political maladroit.

† The provision in question was perpetuated by the Virginia convention of 1829—in some respects the most notable body of this century. It received brief consideration, as appears from the report:

"The question being then put on the second paragraph, Mr. Henderson moved to strike out the provisor (which inhibits the election of priests and ministers of the Gospel to the Legislature). Mr. Henderson put his motion on the ground of principle. It was a conviction of his mind which he could not yield even to the views of his constituents. He considered such exclusion directly at war with the principles laid down in the previous part of the resolution.

"Mr. Clopton demanded the ayes and nays, which were ordered.

"Mr. Giles, in a short speech, pressed these two points—that ministers were taken from among the people by two important privileges. First, the license to preach, and second, the exemption from military duty. This made them a peculiar and privileged order. If those privileges were taken away, it might be more fair to admit them to political privileges, though on that point, he gave no opinion.

"Mr. Campbell, of Brooke, suggested that these objections applied with equal force to justices of the peace, and nobody contended for excluding them."

The vote being taken, ex-President Madison was of the fourteen who voted to strike out, while Philip P. Barbour, Chief-Justice Marshall, ex-President Tyler, and John Randolph were of the eighty-one who voted against the motion.—*Debates of Virginia Convention of* 1829-30, *page* 707.

If the clergy exhibit but little genius for politics, still less is anything discoverable in American tendencies that points churchward, or threatens alliance with any religion.

But in 1849, it was urged that ambitious religionists would corrupt the church for political ends. The argument for perpetuating the political disability of the clergy also found fresh force from a prevailing idea of that particular period. The agitation of the slavery question had produced great feverishness in the public mind. Popular sentiment was overwhelmingly in favor of that peculiar institution. Not only those who were openly unfriendly to it, but those even suspected of being so, were under popular ban. The opponents of slavery were classed as emancipationists. To be an emancipationist was the unpardonable political sin, and worked for the culprit political damnation. It so happened that in the mere handful constituting this party in Kentucky, were ranged certain distinguished clergymen, who, in talent and attainments, were the peers of the brightest intellects of the country. They assumed to speak for their estate, and did so with such boldness and force that the undiscriminating public suspected all clergymen of emancipation tendencies. Unreasonable and unjust as was the suspicion so originating, yet it was none the less potential.

John L. Waller, member of the convention from Woodford county, led what opposition there was in the constitutional convention to the further continuance of clerical disability. He was a minister of the Baptist church, and had received the degree of doctor of divinity. He had long been editor of the *Banner* newspaper, of Louisville, the organ of his denomination in the West. He was justly distinguished, in and out of the State, for great learning, and as a graceful writer and a forcible and eloquent speaker—ripe both in years and fame. He had become a candidate for delegate to the convention under somewhat remarkable circumstances. The celebrated orator and politician, Thomas F. Marshall, had for some time been a candidate for delegate from Woodford county, and was making public addresses to forward his election. Dr. Waller happened to be present on one occasion when Marshall delivered a public speech, and dissenting from certain views relating to Bible teaching on the subject of slavery, asked permission to reply. This was denied by that haughty child of genius unless Waller would become a competing candidate. This condition Marshall supposed would silence his dissatisfied auditor. Somewhat to his surprise, the latter arose, announced himself a candidate for delegate, and delivered a vigorous response. The debate thus begun

continued from day to day, and soon became the most exciting the State had ever witnessed. As a political speaker Mr. Marshall had no equal in Kentucky, save Henry Clay, while his opponent was equally unrivaled in the pulpit. Dr. Waller, having become a candidate merely to obtain the privilege of answering some of the points urged by Marshall, intended to have withdrawn before the election. This, however, his friends would not allow. He was, consequently, voted for, and defeated his opponent by a majority of two hundred and nineteen votes.

His speech in the convention on the subject was a consummate refutation of all the reasons urged in support of the political disability of the clergy. He argued that the creation of this constitutional disability was nothing less than proscription; that it violated the great republican adage of "equal rights to all and exclusive privileges to none." He argued, that if seeking political office was a breach of the minister's duty to the church, the State could not punish it without usurping the functions of the church. Said he:

"The exclusion applies, you perceive, to any preacher, teacher, or priest of religion. A man may preach anything else—deism or atheism—and the restriction does not apply. He may teach the grossest immorality—he may inculcate robbery under the specious name of gambling—or murder, baptized as dueling, * * * he may teach the doctrines of devils, and still be eminently qualified for office. It is only the man that teaches that life and immortality are brought to light by the Gospel—who seeks to diffuse the divine influences of Christianity, that is to be proscribed from all direct participation in the affairs of legislation."

Garrett Davis, member from Bourbon county, presented to the convention a written memorial signed by two clergymen whose names have long been familiar in Kentucky—Stuart Robinson and George W. Brush—the first of the Presbyterian, the latter of the Methodist church. In this memorial, the arguments against the disabling provision were succinctly and forcibly set forth. Assuming that one of the reasons for disability was the real or supposed spiritual power and control exercised by the clergy over the laity, it was urged that this objection did not apply to Protestant ministers, who disavowed any such power or control—and it was insisted that the Protestant preacher should not suffer for the alleged objectionable principles and practices of the Roman Catholic priest.

Several delegates spoke in favor of continuing the disabilities of the clergy, but they signally failed to refute the trenchant arguments of

Waller. The efforts of the latter were seconded only by the speeches of Seleucius Garfield and Mr. Hardin.

The latter spoke as follows:

"I expect I will have to give a vote against a majority of the convention, and I shall make only a few remarks before doing so. I have, for the last forty years, from time to time, noted the exclusion from the legislative halls of Kentucky, of the ministers of the Gospel, and I could never see any good reason for it. I recollect when there were efforts made to force the president of the United States into a recognition of the independence of Spanish America. In some remarks I made in Congress on that subject, I said I did not believe they could establish a republic there. They were all of one religious denomination. And it turned out to be true. Our government is very happily balanced. All our foreign relations, all our matters and things belonging to the nation, and the army and navy, are managed by the government of the United States; and that government is divided into three departments—the legislative, executive, and judicial. They check and balance each other. But it would soon become a consolidated government and a despotism, were it not that the municipal regulations of the country belong to the State government, and they are divided into three departments —the legislative, executive, and judicial. They check and balance each other. The State governments balance the general government, and the general government balances the State governments. And the State governments check and balance each other. But the great check is this: We have in the United States, and in all the States and Territories, no established religion, and so a great many religious denominations have sprung up. They are all worshiping God and their Saviour in the manner their conscience points out to them. And it is fortunate for the United States that no one sect has, perhaps, one-twentieth part of the people.

"I have some statistics of the different religious denominations in Kentucky, which I think correct, which were taken about three years ago. Of Methodists, there are about one hundred and fifty ministers, thirty thousand white members; United Baptists, about fifty thousand; Reformers, from forty to fifty thousand, white and black; Old-School Presbyterians, ninety ministers, and ten thousand members; New-School Presbyterians, twenty-one ministers and twelve hundred members; Episcopals, twenty-seven ministers and about twelve hundred members; and of Roman Catholics, fifty to sixty ministers and a white membership of forty thousand. The whole together of the religious denominations will not amount to more than thirty thousand voters. We have now about one hundred and fifty thousand voters in the State. What danger then is there of a unity of church and State. There is a gentleman over the way, I do not know whether he is a minister of the Gospel or not. Well, if he says he belongs to the church, and he

has two hundred and fifty voters; here is my worthy friend before us (Mr. Waller) who has eight thousand two hundred and fifty voters. Will there be any combination of the Methodists and Baptists? No; you might as well expect oil and water to mix. There can be no collusion, and will be no conspiracy, especially when out of one hundred and fifty-two thousand there are only thirty thousand members of the church. I do not vouch for my information being correct, but a gentleman connected with the church has furnished me with the statistics I have read. What class of men are the clergy? They are moral, virtuous, and intelligent men, and, as a body, are the most learned men in Kentucky, and I say this without fear of contradiction. Some, to be sure, start out on the ground that they have a calling that way. They say Christ made preachers out of fishermen, and that learning is calculated to spoil the preachers. The Catholic clergy are learned men, we know. The father of the gentleman who prayed this morning, sent him four years to Rome that he might be educated. All denominations are trying to give their clergy an education.

"We know that the Presbyterians are doing everything to instruct their clergy. So are the Methodists, so are the Baptists, and so is every religious denomination. And it must be confessed that they are a learned body of men—much more learned and intelligent, generally, than the doctors and lawyers. I will not say that there is more virtue, but I say there is as much. I will not say they possess more natural gifts. Well, what harm have they done? Here is my friend near me (Mr. Waller), one of the best informed men in the house; he has been here nine weeks, and he has troubled the house but once, and that was to-day. There is the gentleman from Mason, who has not spoken much, but when he does speak, speaks well. We all expect to die in a few days, he goes off so much like—

"Hark! from the tombs, a doleful sound,
Mine ears attend the cry:
Ye living men come view the ground,
Where you must shortly lie."

"I am in favor of the admission of the clergy. There is no exclusion in Congress. I have never seen less than from ten to twenty there, and they are as praiseworthy a body of men, and as good members as you can find anywhere. I see nothing in any of these men to exclude them, whether they are Presbyterians, or Baptists; and there is not a man whom I would more willingly meet than my worthy Catholic friend, the priest, who prays for us every few days. These men have a right to go to the Legislature. They pay their taxes as we do—they submit to the laws, and they help to sustain the government. And if there is a war, do you not see them at the head of your regiments, volunteering to pray to the Almighty for the success of our arms? I know the idea of the danger of mixing up church and State has

come to us from the British government. But there we see the church having a representation in the House of Lords. I did not intend to make an argument, but I rose merely to give the information I hold in my hand. But, I repeat, there is no reason why we should exclude them. They have the same rights as we have; they are of an age required by law; they are native Americans, or, if not, naturalized citizens; they submit cheerfully to the law; they are a virtuous body, and they contribute to the support of the government, and, what is more, to the educational part of the country they have contributed more than any other class. Why is it we call gentlemen to pray for us every day? It is to address the throne of grace. 'But,' says the gentleman from Mason, 'there is danger to the country, and, therefore, we must have the preamble which has been offered, and the exclusion of the clergy.' I am utterly against the preamble and against the exclusion."

The vote was taken and the result showed that "Ephraim was joined to his idols." It stood seventeen against, to seventy-four for, the clerical disability clause. "The Redeemer of mankind," said Waller, "was crucified between two thieves, and the memory of that event can be well perpetuated by classifying his ministers with thieves and robbers."

CHAPTER XXXIII.

A KENTUCKY MASTER AND HIS RELATION TO DOMESTIC SLAVERY.

MR. HARDIN spent his life in slave-holding communities, and was himself a slaveholder. For this reason, some notice of that institution and his relation to it seems necessary to a justification of some of his views and sentiments, and a proper estimate of his character. More than a score of years has elapsed since domestic slavery ceased to exist among Americans. Many of its incidents and characteristics are growing dim in the memory of a new generation. Its history and peculiarities have been discolored and exaggerated in literature to such an extent that it will be difficult for posterity to justly estimate its lights and shadows—its virtues and infirmities. In saying there was virtue in it, it is very far from the present purpose to make any defense or apology for it. The former slave States are happily rid of it, and few and far between are those who do not rejoice thereat. It is, however, due the subject of this work to say that there was nothing connected with the institution as it existed in Kentucky repugnant to justice or morality, or incompatible with refinement or humanity. Comparing the social, moral, and religious condition of slave-holding communities of Kentucky with the average communities in non-slave-holding States, their respective balance sheets of virtue and vice would, doubtless, not materially differ in the estimation of impartial judges. If on one hand slavery had its evils, on the other it had its compensations.

African slaves dwelt on George's creek in Pennsylvania, when and where Mr. Hardin was born. The earliest American Hardins were slaveholders. After American independence was achieved, Pennsylvania had by law provided for the prospective emancipation of her slaves. The denizens on George's creek were unconscious that they were affected by the proposed emancipation. They supposed they dwelt in the territory of slave-holding Virginia. Only when, about that period, the dividing line between the two States was surveyed, did they learn their error. It has been supposed (with some show of

probability) that their desire to retain their slave property was one of the causes resulting in the emigration of the Hardin family to Kentucky.

Prior to it becoming a State, slavery existed in Kentucky, by virtue of the laws of Virginia, of which Kentucky was part. No obstruction prevented slaveholders from the latter emigrating to Kentucky. Not so as to the slave-owners of other States. Virginia had already adopted the policy of preventing other than the natural increase of her slave population by interdicting importation from other States and abroad. But this interdiction was not rigidly enforced. Immigrants from Maryland and the Carolinas flowed into Kentucky in a steady stream. It was believed to be beyond the power of Virginia law-makers to forbid *bona fide* settlers from bringing their slaves with them for their own use. The right to do so was claimed under the Federal constitution, then newly adopted. But having conceded this right, no emigrant was allowed to bring with him slaves imported from Africa, the West Indies, or elsewhere beyond the sea, subsequent to the year 1789. No slave whatever, could be brought for the purposes of merchandise. The same policy marked the legislation of Kentucky after it became a State, a policy that had its culmination in the law of 1833, absolutely forbidding importation from other States.

Among the earliest acts of statehood, Kentucky adopted the statutes of Virginia then in force, respecting slaves and slavery. These have sometimes been called, by those who condemned them, the "slave code." To judge it or the men who framed it from the altered standpoint of these times, would be foolish and unfair. To understand those laws, and appreciate the motives of the men who framed them, the situation of the country, the nature and surroundings of slavery, and the prevailing current of thought of that day must all be taken into account. If it seem harsh that a slave caught away from his owner's premises without a written pass was subject to lashes, it should be remembered that his young master, attending the old-field school-house, was receiving similar fare for no greater improprieties.

The personal treatment of slaves under the "code" will bear favorable comparison with the treatment of white sailors in the American and British navies for the same period. The "code" itself does not fully or fairly indicate the contemporary sentiment of the State as to slavery. The latter, practically, modified the harsher features of the former. So public sentiment, in later times,

suspended the "blue laws" of New England. Practically, the relation of the Kentucky master to his slave was not that of owner and chattel, but was patriarchal in character. The slave was a dependent in the household of which the master was head.

The pioneers brought their slaves with them in their earliest journeys across the mountains. The slave shared the dangers that beset his master, and oftentimes his bloody fate. Stories are plentiful in State history and tradition of black heroes encountering death at the hand of savage foes to protect the master and his family. Not only did he share the perils of his master, but likewise the toils and vicissitudes of the wilderness. In sports, master and man were not wholly separated. If the one spent his days in fox-chasing or deer-driving, at night a sportsman not less enthusiastic emerged from the "quarters," accompanied by his faithful dog in quest of opossum, coon, or rabbit. The incense of the saddle of venison on the master's table, was fairly rivaled by the not less savory roast rabbit and opossum that graced the board of the dependent.

Not unnaturally, the slave became identified in feeling and sentiment with his master's family. He rejoiced at its prosperity, and was genuinely distressed by its sorrows and misfortunes. If he gave his labor to his master, the latter in return sheltered and clothed him; defended him from the injuries of others; supported him when sick or too old to labor, and, at last, gave him Christian burial. Examples of the child-like affection and confidence existing between these humble dependents of the household and the master and mistress could be indefinitely multiplied. "Let Mas' John hold my hand," said a slave near death, "and I will not mind dying," and as the master did so, the sinking soul fluttered fearlessly and peacefully out to meet the Merciful Master of all.

Large slaveholders in Kentucky were the exception. This circumstance ameliorated the relation. Mr. Hardin thus expressed himself on this point in a speech in Congress in 1820:

"Do we not know that the happiness and comforts of slaves depend upon a few being owned by one man; for, when hundreds are thrown together upon one place, under an owner who knows them not, who has no affection for them, miserable, indeed, is their condition; but, on the other hand, when a few only belong to one man he knows them, he loves them, he considers them a part of his family; some have been the companions of his youth; others are raised by him, and are the playmates of his children. There is, then, a mutual affection between the white and black part of the

family. When in this situation they are truly happy, so far, at least, as is consistent with slavery. They want nothing; they are crossed by nothing. The last is a source of felicity that we poor busy politicians never know."

Agriculture was the chief pursuit in which slave labor was employed. The master usually directed their labors. The able-bodied sons of the family shared, not unfrequently, the toils of the field. Some of the best work was performed when a slave competed in skill and endurance with a Caucasian rival. Associations of this kind created ties not forgotten when the young master succeeded to the rights of his ancestor. At corn-shuckings, log-rollings, road-workings, and other gatherings of the laborers of the neighborhood, the color line was no obstruction to the free and hearty enjoyment of all. In almost every slave-holding family there was an institution known as the old nurse, whose gentle lullaby was among the earliest of musical sounds that had fallen on the ears of her infant "masters" and "mistresses." She had watched her young charges like unfolding buds bloom and blossom in all the interesting stages from babyhood to maturity. She had been all this time a second mother —watching in sickness, counseling in trouble, and soothing in sorrow. Her motherly rights—thus earned—were, as a rule, always affectionately recognized.

As in all times, in all countries, and among all people, there have ever been good and bad people, so there were good and bad masters, and good and bad slaves. To judge the institution by the conduct of bad masters and bad slaves, would not be less fallacious than to condemn all parents because here and there brutal ones may be found. Cruel and hard masters there were, whose harsh treatment of their slaves was without palliation or excuse.

They always lived, however, under the ban of a just public sentiment. When now and then an outraged slave stealthily avenged his wrongs, there was a sense of public relief when the law allowed him to go free. Good masters usually made good slaves. Bad masters and vicious slaves gravitated toward each other. The former rarely sold his slave voluntarily, except to unite husband and wife, or for some like commendable purpose. When death or financial misfortunes caused compulsory sales, good masters were usually the most generous buyers. The character and disposition of a slave always entered largely into the question of value. As a rule, he was as comfortably clothed and lodged, and as bountifully fed, as the laborer of free communities. Care was taken in regard to his health. Medical

attention was furnished in sickness. It most usually happened that indisposition resulted from his own indiscretion disconnected with his master's service. Few were the slaves injured by over-work. Health and vigor were elements of value which no sensible master would sacrifice.

There was much ground for the argument that slavery had ceased to profit the slaveholder of Kentucky, years before its overthrow. It is true there was, if rightly managed, a profit on the labor of the able-bodied slave. But this profit most usually was largely consumed in maintaining that part of the colored household unable to labor from youth, disease, or infirmity. This was Mr. Hardin's experience. "If it were not," said he, "for supporting my slaves, I would never go near a court-house." The law made it the duty of masters to maintain their old and helpless slaves. This duty passed by inheritance to the heir at law.

Slaves rarely ever received any education in the ordinary branches of learning. It was not practicable to educate them thus. It was not necessary to their efficiency in the sphere they occupied. While it was unfortunate that this was so, in view of the moral teaching they might otherwise have enjoyed, there was compensation in their exemption from the temptation into which crazed enthusiasts (who thought insurrection and murder commendable virtues) might have led them. While one wrong does not justify another, yet self-preservation is the highest law.

Slaves were allowed the privilege of religious instruction and divine worship. In every church edifice, seats were set apart for the occupancy of colored worshipers. Yet they not unnaturally preferred the religious ministrations of their own race. The educated white minister was not as fully apprehended as the less cultured but more sympathetic and unctuous colored one. Almost every neighborhood had its negro preacher, whose credentials (if his own assertion was to be taken), came directly from the Lord. He was usually, though not always, sufficiently educated to read the Bible and hymn book, and had views more or less lucid on a few doctrinal points. He had a general idea of the moral law, and felt himself the inferior of none as a discerner of spiritual things. Once in a while, a colored preacher lost influence with his congregation by drinking too deeply of the Pierian spring. Too much learning raised him out of their orbit. An unfortunate of this class was given to saying many fine things that fell on stony ground. On one occasion before a crowded church full of his

own race, save a few white auditors on a rear bench, old *Peter* thus broke forth: "One of the most glorious events recorded on the pages of history is the voyage of Christopher Columbus when he crossed the Atlantic and discovered a new world. But grander and more glorious was that later voyage, when the Mayflower outrode the storms of the ocean and brought the Bible to America."

The agitation of abolition and other questions affecting the institution of slavery was unfortunate in many respects—one of which will be mentioned. Unaffected by extraneous circumstances, the idea that slavery was unprofitable in Kentucky would have been productive of substantial results. At one period, the sentiment in favor of gradual emancipation had considerable growth. But now and then an emissary was detected in the State from abroad, either assisting slaves to escape, or, still worse, inculcating ideas of insurrection. A circumstance of this kind effectually suppressed the sentiment in favor of emancipation that had required years for development. When the abolitionist preached a "higher law" to nullify those laws protecting slavery, the slaveholder had recourse to his Bible to justify his right and title. Sharp debates were held on the theological aspect of the question. A notorious political divine published a stout volume, in which the testimony of the patriarchs and prophets, as well as the acquiescence of the apostles, were placed in the pro-slavery side of the scales.* Mr. Hardin was the friend of slavery, but questioned its divine origin. "Neither the Old Bible nor the New Testament," said he, "authorized slavery. It was only recognized as in existence."

In the constitutional convention of 1849, the dogma was urged that slavery could not be disturbed even by constitutional action. This idea was ridiculed by Mr. Hardin. "I protest," said he, "against wrapping up negro property as some midwife would wrap up a woman in sixteen blankets, because she has had hard labor." He opposed the doctrine of emancipation. He thought it better for both races that the black remain in bondage. An indulgent and kind master himself, he decided from the condition of his own slaves as to what was best for all. He owned about forty, one-half being adults. He never chastised one of his grown slaves, and rarely one of the younger. They all reverenced him and obeyed him for that reason, rather than fear. He clothed and fed them well and allowed them larger liberties than most masters.

He often brought suits to recover the freedom of negroes held in slavery. Faithful to all clients, he was not less so to these helpless

* W. G. Brownlow, of Tennessee.

ones. He could have little hope for reward in case of success—on failure, none. A characteristic incident is related of one of this class of cases. In a suit to recover freedom for a colored client, the evidence necessary for success was a will, executed and probated (if at all) somewhere in Virginia. After repeated efforts he had failed to discover the desired document. Term after term of court he had managed to obtain the continuance of the case, but delay had proved of no avail. Meantime, his client had been hired out under order of court, and his wages held subject to the result of the suit, and a considerable fund thus accumulated. Finally, the claimant of the negro sent his attorney to Mr. Hardin to propose a settlement, by the terms of which the suit was to be discontinued, and Mr. Hardin to receive all the proceeds accumulated from the hiring. The case seemed hopeless, and the offer was tempting. Further contest promised no benefit to his client, and to be fruitless in a pecuniary view to himself. But dearer than all price was the sense of duty done. "Tell your client," said Mr. Hardin, "that I will not accept his offer; that I would as soon think of selling my Saviour as abandoning that negro's case." Virtue, this time, proved its own reward. He obtained one more continuance, and by another term had procured the missing will, and won his client's freedom.

A luckless class in slavery days were the free negroes of Kentucky. They largely suffered the disadvantages of both freedom and slavery, with few of their compensations. They were socially ostracised by the white race. Their association with slaves was looked upon with distrust. So deplorable was their condition, that at an early period a colonization society was formed in Kentucky by charitable people to encourage their emigration to Africa. A more friendless, helpless class can hardly be imagined. Nothing better illustrates this than the fact that so powerful a leader as Charles A. Wickliffe should have introduced and advocated, in the constitutional convention of 1849, a proposition to empower the State Legislature to make laws punishing them, for other offenses than murder, by banishment from the State, or by selling them into bondage. Mr. Wickliffe said he thought such laws would have a tendency to rid the State of that undesirable class of people. He thought the State might somewhere procure territory for a penal colony. Africa was suggested. Mr. A. K. Marshall opposed the establishment of the penal colony in Africa, on the ground that it might interfere with the success of the colonization society in inducing voluntary emigration there. Mr.

Hardin was not only opposed to a penal colony, but also to banishment or selling into slavery as a punishment for crime. The following are the reasons by which he enforced his views, reasons which testify also to the clear head and sound heart of their author:

"I want to strike out those words because I do not think we have the power to expel a free negro from this State. The free negro, sir, has a vested right to his freedom, and a vested right to his residence here. You may pass laws prohibiting a man from setting the slaves he may now own, or their increase, free; you may pass laws providing that if he does, they shall not remain in Kentucky; you may pass laws prohibiting free negroes, from other States, from coming here; but you can not pass a law, according to my understanding, to compel a free negro who is here to leave; and, to convict him for refusing to do that, is, in my opinion, to convict him for what is no offense. He has, it is true, no political rights in Kentucky, and we know that he is excluded by public sentiment from many social rights; but he owes us allegiance, and we owe him the corresponding right of protection. He is bound to obey our laws; he is bound to contribute toward the support of our government according to his property, and we owe him, in return, what is called local protection.

"Sir, the Spanish government once put in jail a man of the name of Richard Meade; they had no right to do this, because he had been a long time a resident of Spain, and Spain owed him protection. He had not become a subject of Spain, but she owed him local protection because he owed to that government, while there, local allegiance; and upon that state of case being represented to Spain they released him. If you look into the decisions of the Supreme Courts of the United States, and those of the admiralty of Great Britain, you will find that an American citizen, domiciled in Great Britain when war is declared, is entitled to protection, and their vessels, then in British ports, can not be captured, because Great Britain owed them local protection; and the same rule applies to British subjects and British vessels in this country under similar circumstances.

"Now we owe to the free negro local protection, and he owes us local allegiance. That allegiance is to submit to our laws, to obey our laws, and to pay taxes according to the property he may possess. I would submit to this honorable convention that these negroes are poor human beings, and, upon the score of humanity, I would ask, would you treat them thus? Prevent, if you choose, the owner from setting his negro free, but every precept of humanity, every law of Christianity, forbids that we should treat them worse than we would treat dogs. They have a right to enjoy their freedom, when free, as we have to enjoy ours. They have no political rights, but they have every civil right that we have; and what is more, their skin will not be black when they go to heaven, and stand before the judgment seat of

Christ; there, sir, they will be robed as white as we are, and we are to answer for our treatment to them here. I hope my colleague will not press that amendment; it is at war with every feeling of my heart. They have the same inheritance in the blood of Christ that we have, and we are bound to treat them with humanity.

"Sir, what does the amendment propose? That you have a right to send them into banishment, or involuntary servitude, for crime. Then, sir, if you carry that amendment, we have a right to define crime. Now, I deny the policy of that, and I deny the right of it. And you are to sell them out of the State, not as a punishment to keep them from crime hereafter, but you are to subject them to slavery upon what we, the whites, call crime. Sir, I object to this.

"But it is said we may transport them. I deny it. Can you send your officers with a human being beyond the limits of this State? Have you jurisdiction to send a gang of negroes to any place in the United States? No, sir. But the gentleman says we may send them to some country which we may acquire. But we can not acquire any country. If we acquire any country from foreign nations, it is forbidden by the constitution of the United States, which provided that 'no State shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainer, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.'

"Now, sir, no State can make any treaty with any foreign nation. There is no reservation of such a power. Can we make any negotiations with any lawful prince or king of Africa to which we may banish negroes and make it a kind of Botany Bay? No, sir, we can not do it at all. This is a matter which Congress itself can not do. Congress can not appropriate money for the purpose of colonizing negroes; it is not within the power of Congress to do it; and that is the reason why the federal government has never taken up the subject. It is provided in the federal Constitution that 'Congress shall have power to levy and collect taxes, duties, imports, and excises,' to pay the debts and provide for the common defense and general welfare of the United States, but it has no power to appropriate money for the purposes of colonization at all; and that, sir, has been decided over and over again. She can pay debts and provide for the general welfare of the nation. By the 'general welfare of the nation,' is meant an implied power given to the general government for the purposes of carrying the expressed powers into effect. That is the whole of it; and, whenever you go beyond that, Congress is omnipotent as the British Parliament, consisting of kings, lords, and commons.

"But, sir, Congress has no power to appropriate money to send negroes to Liberia. I again repeat, I beg, I beseech, I conjure, my colleague not to

press this amendment. He may have the power, and the House may agree with him, but I do think it would be a reproach to this convention in the eyes of posterity for hundreds of years to come. Suppose, sir, a negro gets drunk; you call it a crime, and sell him into servitude. Suppose he steals a chicken; you call it a crime, and sell him into servitude for life. Suppose he goes fishing on the Sabbath; you call it a crime, and sell him into servitude. Why, sir, you may make anything a crime if you please. Let the free negroes take the same laws that we have. If they commit murder, let them be hung; if they commit other crimes, let them go to jail or the penitentiary. Debar them of any political rights—I am against that; debar them of any social rights—I am against their intermixing with the white population at all. When you have done that, you have done all. They have no political rights or power; and when we have the power we are bound to protect them. In the language of Ulysses, when he bowed in his rags:

"A suppliant bends, Oh! pity human woe,
'Tis what the happy to the unhappy owe."

CHAPTER XXXIV.

MR. HARDIN'S OPINIONS ON SUNDRY SUBJECTS.

SINGLE instances of the extent of vision demonstrate the power of sight. When Samson rent the lion's jaws his fame for strength did not need its subsequent illustrations for support. Similarly, a man of wit and sense may exhibit his powers in a sentence. A few opinions of Mr. Hardin have been gathered which are characteristic, and it is believed will enable the reader to better apprehend the man. They are submitted without any special order, their dissimilar and fragmentary character not allowing any logical arrangement.

Alluding to the legal aphorism, "That it is better that ninety and nine guilty men should escape rather than one innocent man be punished for crime," Mr. Hardin observed, "I never saw an innocent man convicted, while I have seen a thousand guilty men escape. I believe that ninety-nine guilty scoundrels escape for every one that is punished."

He expressed, half a century ago, a view of the form of the British government, novel then, but more familiar now: "There never was a nation in the world that, except in name and a great many forms, perhaps, was more republican than Great Britain. The crown does not interfere with the acts of parliament at all. It is not responsible for anything that is done—for the king, in the language of their government, can do no wrong. The reason is, that he does nothing. His ministers are responsible for all that is done wrong, and they get credit for all that is done right."

He was always perspicuous in his definitions. His distinction between a monarchy and republic is elementary. "In a monarchy, the power is all in the king, and the people have none except what is ceded, and, hence, there are frequent controversies. The people claim power as it is conceded, which the king denies. The king claims his power as a prerogative, for he is the fountain of power, and the people have what he grants, and no more. In a republic, the fountain of all power is in the people, and the officers have as much power as the people grant, and no more. What would be a prerogative in the king, is power in the people."

He entertained an exalted opinion of the French nation and its people. The enthusiastic sentiments of friendship among Americans for Frenchmen dated its origin from the darkest days of the revolution. The folly that culminated in the disaster of Sedan has weakened the admiration this side of the Atlantic formerly felt for France. Mr. Hardin thus expressed the sentiments entertained by a majority of his countrymen in 1849: "Well, God bless the French nation; the French convention was a great thing. It was composed of a powerful set of men, and it struggled and was convulsed in its effort for liberty. Their king turned against them, and their queen and nobility did the same. All Europe declared war against them, and what did the French convention do? They accepted battle with the whole united crowned heads of Europe, and in the language of Danton—'the gauge of battle was the head of a king thrown down.'"

One of his arguments against vesting the governor of the State with an extensive appointing power, was based on the great local influence at the seat of government. This, he urged, gave undue advantage to those residing there. He spoke thus in the constitutional convention on this subject: "We are not made of such stern and obdurate stuff that we can not be operated upon here. We can be softened down sometimes forty ways. There are a great many ways in which a young man can be softened down. I will not enumerate them all. Why was it the seat of government was taken away from New Orleans? It was because the local power was too influential for the people. It was, in consequence, taken to Baton Rouge. Why was it taken from Philadelphia? It was because the local power was too great for the balance of the people to trust it there. Why was it removed from the city of New York? For the same reason."

All his life he was jealous of the superior influence of towns and cities over the agricultural districts, in affairs of government and legislation. He evinced this feeling in his speech in Congress on the Alexandria canal bill, referred to in former pages of this work.* The same sentiment prompted him in the constitutional convention of 1849 to favor a restriction on the representation of cities. A warm debate with James Guthrie (alluded to elsewhere) originated over this question. Speaking of Louisville, he said: "It is as we know a city of great influence in the State. There was always a town that stood as the metropolis of every State. That town is the one to which our exports go and whence our imports come, and from this and other causes it has an immense influence in the legislation of the country.

*See Chapter XIX.

It is the point to which all news is brought and the newspapers give it great and undue influence."

In a speech in the constitutional convention, replying to Hon. William Preston, who had eulogized the city of Louisville, he said: "The gentleman from Louisville has spoken exceedingly well and in fine taste and style. He said that Louisville had a large portion of wealth—that Louisville is wealthy and that Jefferson county is so also. It is true. It is fortunately situated in the State of Kentucky. It is the garden spot of America. But much of that is owing to its position and locality. It seems to me, though, that it ought not to be Aaron's rod and swallow up the rods of the other magicians."

To those residing out of Kentucky, a treat is in store when some adequate pen shall write the history of the agitation in the State for the removal of the capital from its present location. From generation to generation this strife has progressed, with fair prospect of continuing far out toward the boundless shores of eternity. The debate on the question, however, does not seem at all amusing to the Kentucky tax-payer, when he reflects that the drafts on the State treasury to pay for those discussions would aggregate a sum sufficient to erect an edifice eclipsing in magnificence the sculptured grandeur of ancient Athens.

There were reasons disconnected with the question of capital removal—not to be mentioned here—why Mr. Hardin did not think kindly of Frankfort. The main capital building, unchanged since the time he spoke, he thus described: "If this miserable building, drawn after a Grecian temple, and looking for all the world from across the bridge (which it fronts) like the end of another bridge to the hill back of here—and which is a disgrace to the State—if it should take fire, in the name of God, let it burn. We have had two capitols burned down, and a meeting-house or two used as such, and I don't care how soon we get rid of this mean, contemptible, bridge-looking edifice."

He was opposed to foreign immigration. His opposition did not in the least rest on the apprehension of danger from the control of a foreign spiritual power—as professed by a political party that sprung into life a few years after his death. At the very time he was professing this opposition, he, in common with the whole people, were tendering enthusiastic welcome to Kossuth, the Hungarian exile, then a visitor in America. His reason for opposition to foreign immigration he thus expressed: "I pity the poor Irish, the oppressed Eng-

lish, the Scotch, the French, the Italians, the Austrians, and the Hungarians, yet, is it very politic to invite many of them here? We have to take care of ourselves. No one can help seeing that the paupers who are coming here in such numbers (or wealthy men, if you will have it so) will make a population to press on the means for the support of the rest. What will we do with the sixty millions there will be in this country in forty years, if this is not stopped in some way?" Thirty-six years only have passed since this question was propounded, and there is now embarrassment in answering it. The accuracy with which the increase of population was estimated indicated a sagacious foresight close akin to prophecy. He favored stronger naturalization laws as a means of checking immigration. He thought that character of population undesirable, because ignorant of, and not in sympathy with, the principles and institutions of our Government. He preferred Americans above the people of other countries, and he gave his affection to Kentuckians above all Americans. "I would not give one stout-hearted Kentuckian," said he, "for a dozen Cape Cod or Passamaquaddy men; nor would I give a dozen Kentuckians for ten thousand of those who dwell east of the Rhine. I pity them, but my feelings are for Kentucky."

He never wearied in praising his own State and his people. Perhaps, he was—

> "To her virtues very kind,
> To her faults a little blind."

"We are a happy medium," said he, "between the North and the South. The Southern orators go off something like the fellow in the doggerel song—Jim Crow, I believe—

> "'There was a Hoosier came to town,
> He swallowed a hogshead of molasses down,
> The hoops flew off—the hogshead bust,
> And he went off in a thunder-gust.'

"I do think Kentucky has produced not only the best and happiest style of oratory of any State in the Union, but (I may be mistaken) the best in the world. I think there is as general diffusion of education among the people of Kentucky as in any other State. I recollect a gentleman—I think his name was Smith—some years ago taking notes as to the number of persons who could not read or write, in a certain town in this State. He had reported every man on the grand jury as not able to read or write his own name. They had

been quizzing him, as there was not a man of them who could not read and write."

Mr. Hardin had the most implicit faith in "blood." He believed it hereditary—he believed that good and bad qualities passed from parent to child, even to the third and fourth generation—by an inexorable law of descent. An honorable ancestry raised with him a presumption of honest and virtuous offspring. But if, in the ascending line, he discovered a "black sheep," he distrusted the latest generation, however remote.

Individual merit could not dispel the ancestral cloud. The mark of Cain, he thought, might be distinguished in his living seed, if any there be. To his mind the poet did not exaggerate who spoke of certain noblemen, whose—

> ——————"ancient but ignoble blood
> Had crept through scoundrels since the flood."

This belief constituted all his life a rule of action with him. Not unusually, in the court-house, he began with a hostile witness:

"What is your name, sir?"
"What was your father's name?"
"What was your mother's maiden name?"
"Who was your maternal grandfather?" etc., etc.,

Until he struck some disreputable strain, when, with a significant "Ah!" he would dismiss the witness, leaving the jury to suspect (a suspicion he confirmed in argument), that he had detected a lineal descendant of the original Ananias.

Mr. Hardin's views on the powers of a constitutional convention were at variance with those of some of his colleagues. The theory that a State constitution is in any sense a "contract" with some one, which the people have not the sovereign power to abrogate, was more ingenious than it was substantial. He disputed it. Undoubtedly, he announced the true rule for measuring the powers of a convention: "We have the power to do anything that a nation can do, unless forbidden by the Constitution of the United States, and the laws of Congress made in pursuance of it, and the treaties made by the United States in pursuance of the treaty-making power. * * * There is no restraint upon us, except so far as regards these; and, if it were not for the Constitution of the United States, we might declare any gentleman of this convention king or emperor to-morrow,

and he would be king or emperor until the people saw fit to dethrone him, which I suppose they would do very quickly. Well, can we not set the negroes free if we choose? I should think so, compensation or no compensation, those now in existence, or those hereafter to be born."

The subject of rotation in office is ever recurring, and always of interest. Excepting two offices (governor and sheriff) rotation was not enforced by constitutional provision. Mr. Hardin especially urged the extension of the principle to the judiciary, but in this he was overruled. "Nothing in the world," said he, "so purifies and clarifies the political atmosphere as rotation in office; give no man a life estate in office. What is the principle that fostered the growth of the Roman republic, until from a small city it grew to a power that overran the world? It was rotation in office—that no man who filled an office the first year should be re-eligible the second. That principle was first broken upon by Caius Marius, and from that day may be dated the downfall of the Roman republic. You purge your political atmosphere by rotation in office."

He opposed voting by ballot. He believed it would be impossible to prevent fraud. "The difficulty was," said he, "that after the tickets were counted and destroyed, that there would be no chance to detect the fraud."

Referring to the legislative power to grant divorces—a power existing under the constitution of 1799—he said: "I am very much in favor of prohibiting the Legislature from exercising the power of granting divorces. It has been a growing evil for twenty years, and last year I understand there were some three hundred cases or more. It is time to stop this kind of legislation."

In the constitutional convention, Mr. Hardin was in the minority in his opposition to free schools. He was mistaken as to their impracticability, as experience has long since demonstrated, but yet, some of the reasons against them then existing are inherent in the system. In thirty-five years, the occupation of a teacher and of teaching has been revolutionized in many respects, and all for the better. The period rapidly approaches when it will justly rank with the other learned professions.

"I have no opinion of free schools, anyhow—none in the world. They are generally under the management of a miserable set of humbug teachers, at best. The first teacher that a child has, when he starts with his A, B, C, or is learning to spell *bla*, or *baker*, or *absolute*, should be a first-rate scholar.

He should know exactly how to spell and pronounce the English language; and should understand the art of composition and the construction of sentences. In the language of Dean Swift, he should have 'proper words, and they should be put in proper places.' The worst taught child in the world, is he who is taught by a miserable country schoolmaster; and I will appeal to the experience of every man here, who ever went to those schools, to say how hard it is to get clear of the habits of incorrect reading and pronouncing they have contracted at these country schools. For myself, I will say it cost me nearly as much labor as the study of the legal profession itself, to get clear of this miserable mode of pronouncing, contracted before I went to a collegiate school—at the age of seventeen—your wou*ld*, and cou*ld*, and shou*ld*, and all of that.

"I knew a man in Grayson who was called to prove a settlement between two litigants, in a case where a small amount, some thirty, forty, or fifty dollars was involved. He gave in his testimony, and every now and then he would throw in a word of four, five, or six syllables, utterly inappropriate to the sense; like putting a magnificent, gilded saddle and splendid bridle, with plated bit and curb, on a miserable, broken-down pony, or an ox; there was just about as much propriety in his application of these words; and I saw at once he was a country schoolmaster. He had proved the making of the settlement, and said I, 'When did it take place?' 'On the 39th of October,' said he. 'Oh! the 39th of October, you say.' 'Yes, sir.' 'Are you not mistaken; was it not the 29th?' 'No, sir. I know the use of words as well as you do, Mr. Hardin, and say it was the 39th.' I then asked him how many days there were in October. He said he did not exactly recollect, but somewhere between forty and fifty. 'How many months are there in the year?' 'Oh! there you are a little ahead of me, but I know there are over ten and under fifteen.' 'You are a schoolmaster?' 'Yes,' said he, placing his hands on his hips, and looking very self-important, 'thank God, that is my vocation, and I am making an application for a free school up here, and I want you to help me, if you will.' 'Sir,' said I, 'I will do it with all my heart, for you come exactly up to my notion of a free-school teacher."

Mr. Hardin thus distinguished between beautiful and effective speakers: "The speech of the first," said he, "is like music. It charms you while listening to it, but its effect is transient, and when the speech ends the impression passes away with the occasion. The effective speaker does not, or may not please so well while he speaks, but he furnishes his hearer something to think about and carry away with him."

Speaking of biographies, he said there were only two he knew of worth reading: "Boswell's Life of Dr. Johnson," and "Southey's Life of Lord Nelson."

Mr. Hardin was not of those who delight to exalt all that is ancient at the cost of all that is modern—who habitually depreciate the present and praise the past. He enjoyed his surroundings and the virtues of his generation, and appreciated them at their worth. "The world is advancing," said he, "the world is improving. We appear to be standing still, but we move as the world moves in all the arts and sciences. We do not see our advancement, but we are advancing. The world is improving as well in the arts and sciences generally, as in the science of government."

That great occasions develop great men was never so often and singularly illustrated as during the late unhappy civil war. For the matter of that, the history of all nations and ages furnishes argument to the same purport.

"Mankind," said Mr. Hardin, "is equal to any emergency. When our revolution broke out, how was it? Great Britain said, you have not a man in America who can command a company of regulars; you have no talents; but the moment we struck for independence, a thousand, aye, ten thousand, showed themselves on the theater of action, both in the cabinet and in the field. Do you think the Almighty creates men for particular purposes? No, but it is the natural genius of men to resist slavery and bondage, and man in America walked abroad in his own grandeur and majesty. It was the occasion that made Washington and all the generals, and all the statesmen of that day. It was the occasion that made Massena, who fought fourteen years in the royal ranks of Louis XVI., and never knew what energy he had. So it was with Bernadotte, who fought in our ranks. It was the occasion that made Massena, and Bernadotte, Mirabeau, and others."

Speaking of the imperfections of the new constitution in the closing days of the convention, he said: "There is no paper in the world that ingenious men can not find fault with; there is no language used that they can not pick holes in; even the Almighty himself, when he delivered his divine laws to the Jews, was not always understood."

The omnipotence of the reporter in 1835 was as fully established as in this year of grace 1887. Goldsmith evidently had the power of a reporter in mind in the lines:

> "Princes and lords may flourish or may fade,
> A breath can make them as a breath has made."

If the "pen be mightier than the sword," how infinitely more effective is the reporter's pencil than all implements of war? Mr.

Hardin felt all this. "It is a melancholy reflection," said he in Congress, "to see and know how much a man's fame and reputation in this House is made to depend upon the attention or neglect of the reporters of the debates, or upon their whims and caprices, or their good or bad feelings toward the speaker or the cause he is advocating. The public good, however, requires their attendance here, and we must bear with them as a necessary evil."

These illustrations of Mr. Hardin's powers of thought and force of expression could be indefinitely extended. Some of them are common-place, and others express principles and sentiments open to criticism. Yet, so he thought and spoke—and from these fragments, measure may be taken of the intellectual proportions of the man.

CHAPTER XXXV.

PERSONAL TRAITS.

MR. HARDIN was of striking personal appearance. Stalwart is the one word that most nearly describes him. He was full six feet in height, of large bone and frame, but not fleshy. "He did not appear," said one who knew him in 1851, "to be a tall man, but he was strongly made, and had evidently been a powerful man, physically, in earlier life." Prior to his fiftieth year, he was erect, but about that period, from habits of study and inclining his head in deep reflection, he acquired a decided stoop in the shoulders. His complexion was fair, and reddened by exposure; hair light and reddish in hue—fine in texture and worn rather short for that period, and loosely thrown from the broad and high forehead. His head was unusually large and well set on his shoulders—the latter inclining to droop, giving the neck apparently increased length. He was not only broad shouldered, but thick and round chested. Ears and nose large, the latter hinting at neighborship with the firm-set chin. In his profile there was a decided suggestion of Knickerbocker caricatures. The nose was long, slightly aquiline, and when in a speech he paused and pressed the end to one side with his thumb—it seemed to share in the humor that twinkled in the eye. Eyebrows slightly bushy and projecting over the clearest and keenest of grayish blue eyes, which many, in describing their penetrating power, called "goose" eyes. Thin lips of a rather large mouth bespoke an iron will about the corners. The full development of the lower part of the face betokened strength and firmness—physical and intellectual. Mr. Webb, who from childhood had known Mr. Hardin, says:

"In person he was tall, and as I first remember him, straight and active. Afterward—from 1836—he walked with a confirmed stoop. He was of a spare physique, with much angularity in his general make-up, including his features. He was careless in respect to dress, and in general appearance slip-shod. His face was thoughtful at all times, and rarely vivacious."*

In early life, the habitual expression of his face was confident, placid humor, but later, in moments of reflection, it wore a saddened

*Letter to Author

thoughtfulness. Yet always, when in conversation, none was more genial in look and manner. His face was capable of a wonderful variety of expression. To strangers, he seemed austere, but was really not so, except to the impertinent and foppish. In his early life, it was the fashion of Western hunters and farmers to wear no coat, but instead a short outer garment of the pea-jacket type. This fashion still prevails among the elite of Mexican *caballeros*. Mr. Hardin was long addicted to this mode of dress. Ex-President Buchanan spoke of seeing him on one occasion, at an early period of life, thus arrayed at Elizabethtown, the material of his apparel being linen, of home manufacture. In later life, he habitually wore blue dress-coats, with brass buttons, varying his other wardrobe with the season. While his garments were of the best material, they were not always unexceptionable in style or fitting. *But his favorite tailor was an old friend, from whose taste he never appealed. A new garment on him quickly assumed the appearance of age, but he did not discard a faithful friend because of loss of good looks. One who remembers him well, says: "As to shoes, he preferred comfort to shapely tightness." Because his wrist-bands were often unbuttoned, and his shoes untied, he has had an exaggerated posthumous reputation for slouchiness altogether undeserved. Foppishness was his aversion, and he was fond of antagonizing it; but in person and habits, he observed that cleanliness that one with the instincts of a gentleman can never lay aside.

It was very much a matter of course that Mr. Hardin's habits, disposition, and tastes should undergo modification in the course of life from youth to age. In youth, he was fond of manly sports requiring physical strength, skill, and activity, such as running, jumping, wrestling, and throwing, and in these surpassed. He loved hunting and fishing, especially the latter. He always kept himself supplied with fish-gigs, seines, and bird-nets. He was an excellent marksman. His taste for these sports he retained to the last. It is related that he would take his negro servants and go seining in the Beech Fork, a small tributary of Salt river that ran through his lands, supplying not only himself, but his neighbors, with abundance of the delightful fish that then stocked those waters.

His ardor in pursuits requiring physical exertion was not only abated by increasing years, but, also, by an injury to his right hand, received in middle life. He was one day in a "clearing" on his farm, busily engaged in burning log heaps and brush, with a view of pre-

*Lord Macaulay resembled Mr. Hardin in this respect.

BEN HARDIN'S MILL, ON STEWART'S CREEK, NEAR BARDSTOWN.

paring the ground for cultivation. While thus occupied some negro laborers were felling trees. A tree being about to fall, he was warned to get out of the way, but, not heeding in time, was caught beneath the falling branches. For a while he was insensible, and it was feared he was killed. On returning to consciousness his first observation was that "he got out of the way, but the d—d tree turned and followed him." He was severely bruised, but the most serious injury was a broken hand. The bones of the right hand were so fractured as that his fingers were stiffened, and, to a great extent, rendered useless. Ever afterward in writing he thrust his pen between his crippled fingers, removing it with his left hand to get ink and replacing it again.*

He was of wonderful physical endurance. He went in professional pursuits from county to county, often traveling from forty to fifty miles per day; and these journeys were constantly made in all seasons and weather, and always on horseback, and for great part of the year over wretched roads.

He was cheerful and hopeful always. He was discouraged by no obstacle, difficulty, or labor. He seemed to feel himself equal to any emergency. He had that mainspring of all great men—indomitable will. He was tenacious of purpose, and on whatever he had determined, he rallied every energy and resource of his powerful nature. "I never saw my father despondent," says his daughter,† "save on the occasion of the death of his children." But from these sorrows he quickly roused himself, deeming it unbefitting the dignity of life to brood over griefs to which all were subject. Yet late in life his highest pleasure was in recalling and talking of the memory of his precious dead.

He was self-reliant and self-possessed, and enjoyed the full exercise of his faculties in emergencies. His powers of observation and perception were of a rare order. His mental vision and apprehension were clear and strong in their grasp. He was extremely perspicuous in statement and easily heard and comprehended. His mind may be compared to a locomotive at night in one respect; it illuminated the track before it. His hearers had a sensation of having anticipated what he was uttering.

"There were things about him," writes Ken Chapeze Esq.. son of Mr. Hardin's distinguished contemporary (Ben Chapeze), "that marked him to

*In his speech in R. Logan Wickliffe's case, Mr. Hardin gave a different account, but this, like many other "facts" referred to on that occasion, received the pleasing adornments of a lively fancy.

†Mrs. Kate Riley.

me, though a child, from all other men I knew. He seemed to have a clearer idea of what he drove at than others. He talked by gestures, and no one ever possessed clearer articulation. His voice was of the ringing class. I once heard him, when I was but a boy, making a political speech in Hardinsburg. He talked of money, and referred to metals, and, among others, referred to iron. I still freshly remember his pronunciation of the word *bar-iron*, which made me feel as though I heard the sound of a bar of iron thrown on a pavement of stone."

"From 1836 to 1840," writes Hon. B. J. Webb, "when I had frequent opportunities of seeing him, his walk along the street could but remind one of an absorbed thinker. Unless addressed, he seldom lifted his eyes from the ground, and there was a movement of the lips indicative of an inter-communication between his mind and the organs of speech."

If Mr. Disraeli had had Mr. Hardin for his single illustration, he, perhaps, would not have expressed himself otherwise than he did in his "Literary Character of Men of Genius," concerning the art of meditation.*

"The art of meditation may be exercised at all hours, and in all places; and men of genius in their walks, at table, and amid assemblies, turning the eye of the mind inward, can form an artificial solitude, retired amid a crowd, calm amid distraction, and wise amid folly."

This habit of meditation was not, in Mr. Hardin's case, for indulgence of the vagaries and figments of fancy. While thus absorbed, his mind was engaged in summing up, from his well-stored memory, all the facts pertaining to a subject; sifting and weighing them; analyzing and drawing deductions from facts or principles, or constructing some well-knit argument to be hurled with convincing force in the forum at the understanding of court or jury, or from the stump at the American citizen at large.

Allusion is elsewhere made to Mr. Hardin's fondness for church singing and religious songs. He enjoyed instrumental music and found especial entertainment in the stirring notes of the violin. He could neither sing nor perform on any instrument, nor had he such insight as qualified him for discriminating criticism of musical performances. Yet, he could distinguish that particular song or air that pleased him from the one that did not, and this was his sole and single test of musical excellence.

* Page 177.

He was social in habits, fond of his friends, and of excellent colloquial powers. No one had greater adaptability to surrounding circumstances. With rich or poor, the rude or refined, the ignorant or the learned—with every class he was able to find common ground for contact or communion in thought or sentiment. In the most refined and intelligent circles he could make himself the center of attraction, while his jokes on proper occasion were such as to suit the rudest demands.

"When I was quite a boy," says Hon. B. H. Bristow (who confesses to an abiding interest in everything pertaining to his native State), "I saw Mr. Hardin at Elizabethtown, and was greatly impressed by his kindly interest in me, and his accurate knowledge of all my ancestors and their relations and connections. Perhaps, one of his most remarkable characteristics was his minute knowledge of men and families in Kentucky, with all their ramifications."

The charge has sometimes been made that Mr. Hardin was a coarse and unfeeling man—coarse in manners and disregardful of the feelings of others. That a man who did not habitually cloak his feelings and sentiments by observing the hollow precepts of Chesterfield, but, on the contrary, acted as he felt, should now and then have appeared rude or uncouth, was, perhaps, not unnatural. But when he chose to be complaisant and conciliatory, no one could do so more consummately.

"In 1825," says H. D. Taylor, Esq., of Hartford, "I was quite a young man, had studied law and been examined by Judge McLean, and had gone to Litchfield to obtain Judge Booker's signature to my license. There was at Hartford at that time a lawyer, with more reputation as a land-jobber than anything else, who entrusted me with a letter to Mr. Hardin. After my arrival, he was pointed out to me, as he lay reclining on a bench on the hotel-porch, his feet in slippers, and his hose tops fallen down, leaving an uncovered space of ankle. He was not asleep, but seemed in revery. I had often heard of him, but saw him then for the first time. I approached him, and told him I had a letter for him, delivering it at the same time. He rose up, opened it, glanced at the signature, tore it in two, threw it down, and again resumed his reclining position, not having uttered a single word. For the writer of the letter I had no respect, and he was a character for whom Mr. Hardin had no toleration, yet I felt affronted at the reception of his epistle. I was outraged and indignant, but said nothing. Shortly afterward, other lawyers arrived in the town, among them my friend Mr. McHenry, between whom and Mr. Hardin hearty greetings were exchanged.

Although reluctant, I suffered myself to be introduced by Mr. McHenry to Mr. Hardin. He was not only cordial, but seemed to make an effort to entertain me, in which I confess he entirely succeeded. He abounded with reminiscences of his school-days at Hartford, which he related in a charming way, and, before we parted, I esteemed him more than I deemed possible at our first encounter."

His literary acquisitions were extensive, and always at command. Without giving any just ground to be suspected of pedantry, yet, he constantly, and in a most interesting way, made allusions to matters of learning. Aside from its divine teachings, he greatly admired the Bible for its beauties, as well as its wisdom. He was a student of the Scriptures, and a fairly-versed theologian.

Said James Barbour, Esq., of Maysville:

"My mother was a daughter of John Green; my father a brother of Mrs. Hardin. When I was a boy, Mr. Hardin came to Danville (where we lived) to attend court—being engaged as counsel in an important case. He was invited by my father to be our guest during his stay. He accepted the invitation, and remained a week or so. My mother and sister had heard a great deal of his roughness of manner, and were not a little surprised when they came to know him. He was witty, humorous, and interesting in conversation. My mother and sister were much engrossed with the missionary cause, and were delighted to hear Mr. Hardin talk of it familiarly and in a most instructive way. His knowledge of the details of the subject far exceeded their own, and he grew enthusiastic in discussing it. 'Missionaries,' said he, 'have been the great geographers of all ages. The ordinary explorer went around the coasts and marked its indentations, but the missionaries had gone through the country, and thus disclosed its interior conformation to the enlightened world.' He said: 'Solomon was a great merchant prince, who had extended commerce and knowledge among surrounding nations.' He pronounced him the first great missionary. This style of conversation quite won my mother and sister, both of whom concluded that Mr. Hardin was not only the most entertaining of men, but in his views was especially orthodox. They were, however, not a little shocked the last morning of his stay, when he again referred to Solomon, the great missionary. He spoke of his enterprise and wisdom, 'but,' said he, 'I have never discovered in the records of all history—sacred or profane—a d—der rascal than this same Solomon.'"

He seldom drank intoxicating liquors. "I have heard him say," observed one who was present, "when asked to drink: 'Boys, I will fight chickens with you, play marbles, or play cards, but one thing I

can not do—I can not drink whisky.'" Beside this abstinent declaration, made during one of his political campaigns, must be placed the following incident, related by that prince of story-tellers, Colonel Richard Wintersmith, illustrating how all rules are subject to exception.

"I was a young lawyer at Elizabethtown, not especially burdened with practice. Mr. Hardin had been the particular friend of my father, and so I had his good-will by inheritance. My brother, Charles, was an excellent young lawyer, especially skilled in pleading, and, more than I, a favorite of Mr. Hardin. *The latter lost no opportunity of publicly expressing his high opinion of my brother's talents. For my lawyership, he had less respect. One morning, while stopping at the principal hotel in Elizabethtown, he had arisen early, and I invited him to join me in a social glass at the bar. 'It is against my rule to drink liquor, Richard, but as your father was my best friend, in memory of that friendship I will drink with you.' After the drink, some conversation occurred, in which Mr. Hardin was unusually social. I soon proposed another drink. 'It is outrageous, Richard,' said he, 'that you should waste your money in this way, but your father was my best friend, and it being clear that you are going to spend your patrimony anyhow, I, perhaps, have as much right to share it as any one.' After the second drink, his tongue was loosened, and he held forth in his finest vein, about the time he played the joke on the young fellows in a Virginia debating society."

He was a good walker and fond of it. In that exercise there seems to have been for him a pleasing exhilaration favorable to mental effort. His pace to and fro in the court-room, during the sessions of court, was as familiar as the man himself. He walked with a long, deliberate, and measured stride—not unlike the stage conception of that of the "Prince," or "his grace, the Duke"—except that Mr. Hardin superadded an inclination of the body at each step that distinguished his gait from royalty. Sometimes one hand was thrust behind, and the other employed in gesticulation, while at others he toyed with and caressed his crippled hand. In his own house or, in pleasant weather, in his yard and grounds he indulged in wrapt thought, striding back and forth. He sometimes traveled by stage coaches and steamboats, though from necessity rather than choice. The former frequently produced sickness, except as he rode outside.

He was fond of relating the following incident of his stage-coach experience. He got into the stage at Harrodsburg one morning before

* The late Hon. Charles G. Wintersmith, of Elizabethtown, was distinguished for great talents, not only at the bar, but in many high offices. His literary acquirements were extensive, and his legal learning profound, to which were added the graces of a Christian gentleman.

daylight and obtained a seat between two passengers, who had previously entered. He traveled some distance before daylight at last entered the stage. He then discovered Dr. Wilkinson on one side of him and Murdaugh on the other, both of whom he had shortly before prosecuted for murder. "I felt every moment," said he, "as if a knife was entering my body, and listened for a pistol-shot besides."* His accustomed and favorite mode of travel was on horseback. Never fastidious about riding qualities or equipage, he was a good traveler. In that early day of bad roads—a day still lingering in many localities in Kentucky—there was a freedom, independence, and assurance in horseback travel to be found in no other mode. In attending the different courts of his circuit, going to the State capital, and on various occasions to Washington City, he traveled on horseback. He was journeying thus when the accident befell him that resulted in his death.

Mr. Hardin had a fancy for bestowing names or titles, which, in his mind, harmonized better with individuals than their lawful appellation. Elsewhere the reader may have been struck with a similar peculiarity of Governor Robert P. Letcher, who familiarly styled Mr. Clay, the "old Prince."† Said a gentleman to the author: "I frequently in my boyhood, with my father, did carpenter's work about Mr. Hardin's home place. He was entirely familiar with my name, but called me "Noble," because I reminded him of an early friend of that name.‡ Another individual he habitually called "Ephraim Smooth," for suggestive reasons. His old-time friend, Ben Chapeze—the record of whose Gallic lineage was plainly to be read in his dark features, black eyes, and raven hair—he called the "Black Prince." His kinsman, Robert Wickliffe, of Lexington, a man of austere courtliness, he dubbed "The Duke." His early rival, Judge Rowan, with his large frame, surmounted by a leonine head, with deep, mellow voice and splendid presence, he called "the old Monarch." A certain judge was only known to Mr. Hardin as "Pontius Pilate." His penchant for this kind of invention was turned against him on one occasion by Governor Pope, when they were anti-Jackson candidates for Congress against each other. The object of each was to win the favor of the Jackson men, as the votes of the latter, although greatly in the minority in the district, might serve to elect. On the occasion of a debate at Mt. Washington, Pope referred to his own respect for General Jackson, and to the contemptuous ridicule with which Mr. Hardin invari-

* Letter from Attorney-General Garland. † Tom Marshall usually called Mr. Clay "Old Master," imitating the vernacular of slavery. ‡ Louis L. Moore, of Calhoon.

ably treated the old hero, in always derisively calling him "King Jackson." The charge of Pope was entirely accurate, but it so happened that the Democrats of that vicinity had not heard Hardin deal with his majesty. "Yes," said Mr. Hardin in reply, with an audacity not quite candid, "I do call him King Jackson, and the American citizen who can meet the hero of New Orleans, with his clear, blue eye and tall, manly form, and not feel that he is in the presence of the equal of any king that ever sat on a throne, is unworthy to live in a free country." It may be observed that "King Jackson's" men in that region voted for Mr. Hardin with great unanimity in the following election.*

In his Owsley speech, in 1847, he derisively and persistently called Governor Owsley "the distinguished Whig." When Mr. Mitchell, his assistant in the secretary of State's office, took the Governor's side in the controversy between the governor and Mr. Hardin, the latter dubbed him "Duke of Buckingham," and habitually referred to him as "his grace, the Duke." In the constitutional convention, he threw Mr. Guthrie into a towering rage by a speech, in the course of which he called Mr. Guthrie (a man of large physical proportions) "Goliath of Gath." Charles A. Wickliffe, a man of courtly manners and dress, was either "my cousin Charles," or, if in less respectful mood, "Big Dignity."

Mr. Hardin had an overmastering habit of "talking to himself"—a habit which became more confirmed with increasing years. In the court-house, on the street, riding horseback, especially whenever alone or in motion, the struggling thoughts of his busy brain found utterance in subdued mutterings, accompanied by gesticulation.

The following observations of Mr. Disraeli on the enthusiasm of genius are pertinent in this connection:

"The allusions produced by a drama on persons of great sensibility, when all the senses are awakened by a mixture of reality with imagination, is the effect experienced by men of genius in their own vivified ideal world. Real emotions are raised by fiction. In a scene, apparently passing in their presence, where the whole train of circumstances succeeds in all the continuity of nature, and where a sort of real existence appears to rise up before them, they themselves become spectators or actors. Their sympathies are excited, and the exterior organs of sense are visibly affected—they even break out into speech, and often accompany their speech with gestures."†

* Mr. Clay always contemptuously referred to Jackson as "the hero"—and John Quincy Adams, in his "Diary," disrespectfully called him Dr. Andrew Jackson, in grim allusion to the degree of doctor of laws, absurdly conferred by Harvard. † Literary Character of Men of Genius, page 184.

In a will case, where he was assailing the capacity of the testator, one of the evidences of mental aberration was the dead man's habit of soliloquy, on which he laid great stress. The late Governor Helm, for the other side, replied: "If talking to one's self be evidence of insanity, what must we think of the learned gentleman who has just addressed you? I call your attention to him now as a complete refutation of his own argument." Meantime, Mr. Hardin had been pacing back and forth outside the bar, still arguing the case to himself in undertone, and indulging vehement gesticulation.

Sometimes in the social circle he would become wholly lost in revery—unconscious of his surroundings, and would imagine himself busy in some scene passing before his mental vision. An intimate personal friend relates the following strange incident

"A few years before his death, I spent a Sunday at Mr. Hardin's house. He was in high spirits and running over with anecdotes and humorous allusions. His habit of soliloquy had a singular illustration on that day. In the midst of a lively conversation, he suddenly became silent and abstracted. Presently he began talking to himself. 'Call the witnesses, Mr. Sheriff,' said he, 'call the witnesses, sir, I will give you their names.' He thereupon repeated the names of several witnesses in the case of Logan Wickliffe, charged with the murder of Gray, then pending in Washington county. 'Be sworn, gentlemen,' said he, 'I will swear you myself,' and he repeated the usual oath. He then called the witnesses, one by one, and questioned them about the case. He paused from time to time in the attitude of listening, as though he had heard responses to each question. On completing the examination of these imaginary witnesses, he muttered, 'all lies, all lies.' At this point, he broke off this remarkable performance, and resumed his part in the conversation precisely where it had been thus interrupted—seemingly utterly unconscious that anything irrelevant had occurred."

On another occasion, in the presence of several gentlemen, he fell into one of these reveries, but was silent. When it ended, he began an earnest argument to prove that the misdeeds of humanity are punished in this world. To support his views, he adduced many illustrations. "How about punishment in the next world, Mr. Hardin," interrupted one of those present. "I don't know, sir," he replied. "I know nothing about it. I have never been there."

When absorbed in this singular manner, it was imprudent to disturb him. Once he was walking the streets in Bardstown, muttering to himself, and gesticulating, unconscious of surroundings. One of those impertinent, but well-meaning, fellows, who "rush in where

angels fear to tread," stopped him. "Mr. Hardin," said the man, "people say that you are losing your mind, and it seems to me to be true." Hardin glared at him a few seconds as though meditating means or mode of destruction. "The people say that I am losing my mind, do they?" "Yes," responded the maladroit, less confidently. "Do you know, sir, what people say of you, sir?" "No." "Well, I'll tell you, sir. They all agree that you are a d—d little fool." Saying which, Hardin passed on.

Mr. Hardin was accused of being deficient in physical courage. He lived at a period and in a locality where and when to be so suspected was to his serious discredit. It has been intimated that the edge of his invective was sometimes dulled by his fears. It has been said (on authority not to be disregarded), that when secure from personal responsibility he could denounce an enemy in the most blood-curdling way, and profess a fool-hardy daring not surpassed by any age, which he did not indulge in less secure circumstances. But he was physically disabled from engaging in personal encounters during the greater part of his life, and wholly powerless to cope with the pugnacious citizen, more abundant in his day than now, who had the grit to engage in fisticuffs, and was always ready for the encounter. One who knew him, in answer to the author's question as to his courage, responded: "he was cowardly, sir; he would run like a turkey. I remember," continued this informant, "an occasion when he came out of the court-house at Elizabethtown, that a man—somewhat of a bully and ruffian, it is true—who was offended at Mr. Hardin's allusion to him in a speech, met him, and began cursing and abusing him. He followed him to his hotel and cursed him on his route. He followed him into the bar, when he ordered his horse, and cursed him there. He followed him into the dining-room, and, sitting near him at the table, continued to speak of him in his hearing most offensively. Mr. Hardin nevertheless ate a hearty meal, and, during the entire time, paid not the slightest attention to the abuse. After dinner he put on his leggins (which he wore at all seasons, in traveling horseback). His horse was brought, he mounted, put each foot in the stirrups, examined himself to see that he was equipped for the journey, and then, for the first time, turning to his maligner, and in a most savage way, exclaimed: 'Dry up, you dirty dog, or I will get down there and cut your livers out!' Saying which, without waiting response, he gave his horse a keen cut with a cowhide and rode away, leaving his adversary dumbfounded at the denouement."

After all, physical courage is a quality in which the most ignorant are the equals of the most intelligent, in which the brute excels human kind. "Brute" courage, it is sometimes not inappropriately called, a term exceedingly descriptive. Mr. Hardin's rare moral courage amply compensated for any real or supposed deficiency in the respect referred to. He had strong convictions, and unfalteringly clung to them in sun and storm. His public career, from the beginning to the end, was filled with illustrations of this trait. His part in the Old and New Court struggle, and his contest with Governor Owsley, evinced a moral courage and an intellectual fortitude rarely equaled.

CHAPTER XXXVI.

SOME THINGS OTHERS THOUGHT AND SAID OF MR. HARDIN.

CHARACTER, or its manifestations, after all, is a matter resting much in the domain of public opinion. It is illuminated or discolored by the effect of partiality or prejudice on the lens through which it is discerned. An enemy and a friend are seen more or less truly, but on different sides, and in varied lights. Thus they seem antipodal in characteristics, yet, when beheld in like conditions, and from similar standpoints, are scarcely distinguishable. These observations but amplify the old saying: "No one is a hero to his valet." From the valet's point of observation, one does not so appear.

The witty and philosophic Doctor Holmes was not mistaken when he said, that when John and Thomas conversed, at least six persons of them were present. There were the real John and the real Thomas —two. There were John's ideal John, and Thomas' ideal Thomas—four. John's ideal Thomas, and Thomas' ideal John—six.* Two others, the discerning reader will perceive, are omitted in this estimate, assuming, as should be done, that John and Thomas were friends. The omitted two are by no means so comely as either of the other six. They are the respective John and Thomas as they appear to their enemies.

In estimating the character of one not personally known, the true mean will be found between the extreme opinions of friends and enemies. Instead of undertaking this formal estimate, a selection of expressed opinions, emanating from those who were friends and from those who disliked Mr. Hardin, are here gathered. Many of these were publicly expressed, in his lifetime, and may serve other purposes than showing what others thought and said of him. They may throw light on some of his motives, and explain many of his actions. Some matters that might be alluded to in this connection, will be found elsewhere, in the estimate of his character as a lawyer and statesman.

During his lifetime, the newspapers teemed with notices of him at the bar, in Congress, on the stump, and in private life. His large and angular physical "make-up" indicated a massive intellectuality, jagged and projecting, with which the public were perpetually com-

* Autocrat of the Breakfast Table, page 61.

ing in opposing contact. In this contact, the public always came off second best, and, to attract attention from its discomfiture, assailed him in some vulnerable part, or resorted, in default of other revenge, to simple vituperation.

In the brilliant, but erratic, Thomas F. Marshall, of Kentucky, Mr. Hardin had ever a caustic and relentless critic. So unsparing were these criticisms as to clearly suggest a feeling of personal hostility. The origin of this is probably to be traced to a natural antipathy between two children of genius, rather than to any specific *casus belli*. He and Hardin had a debate in the State-house at Frankfort, in January, 1850, on the subject of the new constitution. The resources of wit sarcasm and invective were in large measure exhausted on either side. The antagonism of the disputants was thus intensified beyond all reconciliation. A slight idea of the temper of this encounter may be formed from Marshall's allusion to it: "We would prefer to hunt the lion, even though death were certain from his paw, to engaging with a skunk, whose weapons of offense, though not mortal, are such as to deprive the conflict of all dignity and honor." Marshall saw everything in the light of his passions, and the reader need not be admonished that his estimates of an adversary are little to be trusted. He thus undertakes a formal estimate of Mr. Hardin's character in the "Old Guard," of which he was editor:

"Within a narrow and vicious circle, Ben Hardin is a good judge of bad men. A scoffer and a cynic, with no deep moral sense himself, with neither relish nor perception of the sublime and great, he has studied nature in its shameful parts, and thinks he knows the whole anatomy of man. A shrewd man he certainly is, but shrewdness is not wisdom. He thinks every man has his price, and can not conceive of the disinterested at all. He conceives himself a statesman and a philosopher. He is about as much of either as he is of an orator or poet. He could not become the latter, for he has no imagination; nor the former, for he has no heart. He knows the names of the most celebrated nations of antiquity, and of the more remarkable men who flourished then, and has a smattering of modern history and geography. But of the great and steady movements of human society, and of the causes which have retarded or impelled them, of the real progress of the human understanding, of the political problems which have been, or which remain to be, solved, of the philosophy of history, or the science of government, he knows nothing."

On one occasion in the constitutional convention of 1849, Mr. Hardin had ridiculed James Guthrie, the president of that body, for

mispronouncing the word tyrannical—Hardin imitating him in repeating it—"terinical;" thus afforded Marshall an opportunity for assailing Hardin for pedantry and deficient scholarship—an opportunity which he thus improved:

"We do not criticise Mr. Hardin's ignorance, but his pedantry. For a man who notices (and cackles over his discovery), the smallest imperfection in other men's speech, to be guilty of blunders in his most elaborate discourses that would disgrace a stable-boy, might provoke a castigation from persons less amiable than we are. Mr. Hardin has fallen in, evidently late in life, with Pope's translation of Homer, and Tooke's Pantheon, or some other smaller work on the heathen mythology, and he is everlastingly, in his talks, boring his unfortunate auditors about Gods and Goddesses, Heroes and Heroines. Jupiter and Juno, Mars and Venus, Hector and Andromache, Paris and Helen, Achilles and Briseis, Ulysses and Penelope, rumble along his discourse like badly-imitated thunder among the wretchedly-daubed scenery of some provincial theater.

"The only one of Homer's heroes he seems to have selected for his model is Thersites. Of all the Gods, good or bad, the only one between whom and himself we detect the faintest resemblance is Saturn—that monstrous deity who is said to have feasted on his own family, and have devoured his own offspring. This is the only chance for an apotheosis; the only means left by which he is to be deified."

It seems quite possible that Mr. Marshall, while berating Hardin for supposed literary sins, was himself offending quite as seriously. The above criticism is so very suggestive of Caleb Cushing's attack in Congress, in 1835, as to create a strong suspicion of plagiarism. Mr. Cushing, referring to Mr. Hardin's habit of quoting to the House from Homer, begged "leave to refer to that celebrated author for an illustration apropos to the occasion." He regretted "to observe upon the floor a disputant who, with neither the courage of Achilles for the combat, nor the wisdom of Ulysses for the council, yet with the gray hairs of Nestor on his head, condescending to perpetually play the part of the snarling Thersites."*

The next criticism of Mr. Hardin is taken from a very readable and graphic "Biographical Sketch of Lazarus W. Powell," a former governor of the State, published under the auspices of the General Assembly. Its author, Hon. Ben J. Webb, knew Mr. Hardin long and well; has himself served the Commonwealth in honorable stations, and by his graceful pen done signal service to the literature of the State. He admits, privately, that on one occasion he felt ill-

* Living Representative Men, by John Savage, page 147. See notes to page 278, ante.

used by Mr. Hardin. While it would be unfair to say the following reference was resentful, yet it is but just to say it did not emanate from an admirer of his character:

"The honorable Ben Hardin, or "Old Kitchen Knife," by which soubriquet he was afterward known in the Congress of the United States, was undoubtedly one of the shrewdest advocates that was ever intrusted with a client's interest in any court of the Commonwealth. He affected a simplicity in dress that approached slovenliness. He was lank in person, slightly stooping from middle age, and exceedingly restless in manner. * * * He possessed in an eminent degree the faculty of adapting himself to all classes of men. At one time he would appear to be as deeply interested in the result of a foot-race, or a wrestling-match, as the most ignorant boor on the grounds; and at other times he would discuss agriculture with the farmers, domestic matters with their wives, science with the learned, and politics with everybody. With talents so diversified, it is not to be wondered at that he should have acquired, in the course of time, a reputation for sincerity that was not particularly enviable."

Said this writer afterward:

"I can not say that Mr. Hardin was regarded with strong affection by any one. Neither can I say that he had any persistent enemies. The regard in which he was held was solely due to the public recognition of his great talents."

The next expression as to Mr. Hardin is by a lawyer who has long stood at the head of the bar where he practices. He knew Mr. Hardin, and had begun to rise in the profession only as Mr. Hardin was departing. He pretends no partiality for him, but his well-known sense of justice gives great weight to his slightest word. Said he: "Mr. Hardin was highly endowed with the best of all the senses—common sense. He knew mankind, was a sound lawyer, and a keen politician."*

The following description is by a Kentuckian, a lawyer, long a resident of another State, who may well be supposed to express his impartial impression:

"My memory does not go back to a time when the name of Ben Hardin was not as familiar as a household word in all circles to which I was admitted. I left Kentucky, however, at an early age without ever having seen him. * * * Some seventeen years afterward, I met him at Jackson, Miss. He came to argue the great case, then pending in the Supreme Court, between S. S. Prentiss and the heirs of Vick, involving the title to valuable property in Vicksburg.

*Hon. Jesse W. Kincheloe.

"On that visit I had a few words of private conversation with him, in which he said nothing worthy of remembrance. I had often heard him described as sloven in dress, and as negligent respecting external appearance, but I was not prepared for so wide a departure from the customs of good society as I then witnessed. An old thread-bare, rusty, and dusty blue coat, which had been a misfit from the first; a pair of linsey-woolsey pantaloons, bagging, misfitting, and worn to threads at the extremity from being trodden under his heels; coarse shoes, without strings, and which had apparently never known blacking. Such was the outer Ben Hardin. I can not say that a closer inspection of his features and manners did much to remove the unfavorable impression made by his general contour. His eye had little expression, his features were stolid, and his movements devoid of grace or dignity. His general appearance was about that of a plain Kentucky farmer in his every-day attire." *

To a lawyer and a statesman—one who has held the highest office in his State, and the highest federal office his State can bestow, one whose attainments and talents have adorned every station he has occupied, to the late John W. Stevenson—Mr. Hardin appeared far differently:

"I have rarely known," says he, "a more remarkable man. As a lawyer, a debater in a popular representative assembly, or as a strong disputant on the hustings in the discussion of important constitutional questions before the people, like the Old and New Court question, or the cut and thrust of political controversy, Mr. Hardin had few equals. So, too, he was a leader in every deliberative body of which he was a member.

"Mr. Hardin's success was in some degree attributable to his strong judgment, sterling common sense, and his accurate knowledge of human nature. Always ready, original, and suggestive, he was quick, sagacious, and powerful. He seized upon the strong point of his case, and held on to it with a power and force that was wonderful. Mr. Hardin professed to despise all efforts at eloquence or display, and disdained all ornament. He spoke with a clearness, directness, and strength that was exceedingly attractive. His mind was well stored with information, and he had a memory as wonderful as it was accurate. He seemed to forget nothing. He was often keenly sarcastic and severe—not excited or petulant, but cool, classical, and vitriolic.

"Most unfortunate, too, was it for him on whom his sarcasm fell. In the memorable contest which Mr. Hardin, as secretary of State, had with Governor Owsley, he, in his defense before a committee of that body, delivered a speech, which for power, interest, sarcasm, and originality was unequaled since the days of Edmund Burke. Never have I heard a speech whose popular effect was more overwhelming.

* Preston Hay, of Mississippi.

"Mr. Hardin abounded in anecdote and illustration. I was fond of him. I did not overestimate his power. He was agreeable, edifying, and instructive in conversation; kind to his friends, but hostile to those whom he did not admire. None can deny him rare gifts."

In "Why We Laugh," Hon. Samuel S. Cox, at present United States minister at the court of the Sultan, gives the following touches to the character of Mr. Hardin:

"Governor Corwin once told me that Mr. Hardin was the most entertaining man he ever knew. He had an exhaustless fund of anecdote, and with it great natural parts and acquired culture. * * * *

"It is said that Mr. Hardin was a rough-and-ready debater, that his oratory was racy of the Kentucky stump and soil, and that he had more pugnacity than polish. He was known by the soubriquet of 'Meat-ax Hardin.' Randolph said of him that he was 'a butcher-knife sharpened on a brick-bat.' This is not my impression from the meager report of his speeches or from the articles now being published about him by Mr. Haycraft, of Elizabethtown, Ky. It is not the true impression.

"Mr. Hardin was a man of disciplined mind. He was not at all of the Crockett-Boone order. He had a native chivalry and independence which were a representative of a border class at that day, but he was a man full of classic, historic, legal, and other resources. He had the varied armory which equips for general or special debate. Like a good lawyer, and with a wonderful memory and quick perception, he was the very man for the "occasion sudden." But he was of the humorous rather than of the witty kind. The butcher-knife is too coarse and the vendetta dirk too polished to describe his qualities. * * * It is related of Mr. Buchanan, that in early life he went to Kentucky to settle. He saw Mr. Hardin in court, dressed in his unbleached linen, careless and clownish. But he heard him argue, and, turning from the court-house, he said: 'If such looking men are so smart in Kentucky, it is no place for me.' * * * *

"Mr. Hardin's allusions to the classics are not infrequent. He especially loved Homer, and, as will be seen hereafter, he became indissolubly linked with one of the Homeric heroes, the 'snarling Thersites.' Caleb Cushing forged the link in a graceful retort. Was this love of the classics one of the levers of this Kentuckian over men?

"It is related of him that when one of his own side made a speech, he took his hat and left the House. But when Rufus Choate began his first mellifluous speech, this 'meat-ax' man lingered and listened, and, listening, was lost in rapture. This demi-god of the Western hustings sits fascinated and enmeshed by the involutions, all full of depth, and all starred with learning, with which Choate delighted his ear and mind. Was there

no refined susceptibility in this rough and hardy man? Choate brought the music out of his soul, as the wind does out of the woods. He held Hardin as with the glittering eye of the ancient mariner. It was done by no other necromancy than the silver tongue and golden thought, interwoven and intertwisted by a skill that would puzzle a Genoese filigree-worker."

A distinguished lawyer and ex-member of a former presidential cabinet, Hon. Joseph Holt, writes that he does not "feel that he could contribute any information in illustration of Mr. Hardin's character," yet he adds: "He was a man of the most marked individuality of character, and this individuality was constantly maintained. He was uniformly kind to me, both personally and professionally, so that, with a glowing admiration of his wonderful intellectual gifts, the recollection of him that I cherish is at once grateful and affectionate."

*Colonel Alfred Allen, of the Hardinsburg bar, once prominent in State politics, and formerly American minister to China, from his boyhood knew Mr. Hardin. In a letter to the author, among other things, he says:

"Mr. Hardin's clothes were loose and ill-fitting, although always made of the best material suitable to the season. He was studious, and liked all sorts of reading matter, especially history. He was a splendid historian, and had a taste for fiction, whether in prose or verse, although his quotations were mostly from the Old Testament, the old poets, and ancient history. His quotations were always apropos and striking. He never had justice done him as a man of letters. I can not just now remember sufficient to quote a specimen of his pathos, but do remember that his pathos, in its place, was as melting as his wit was brilliant and inspiriting."

In a lecture by Colonel James P. Barbour, before the Historical Society of Lebanon, Ky., in March, 1885, on the subject of Mr. Hardin's life and character, the speaker commented as follows:

"Mr. Hardin's education has been criticised and underrated, and it is true that he had not the advantages that the young men of this generation enjoy. But, with the foundation laid by his teachers in his mother tongue and in the classics, added to his great natural endowments, his extensive reading, etc., I think that in listening to one of his great speeches the keenest observer would hardly recognize that the speaker was really suffering from any embarrassment in that line.

"There was never a more original speaker than Mr. Hardin. Whether in argument or illustration, in logic or humor, his style and methods were

* President Lincoln, born in the region where Mr. Hardin spent his life, and familiar with his name and fame from his earliest years, always expressed the heartiest admiration for his talents and genius, and sometimes entertained his friends by repeating extracts from his speeches.

all his own. It has been said that 'brevity is the soul of wit.' With this definition admitted, he was certainly not a wit, but in humor and anecdote he had few, if any, equals, and in these his methods and execution were perfect.

"He was emphatically a man of the people, the common people, that middle class of virtue and intelligence that constitutes the great mass of our population. With these his tastes were congenial, with them he loved to associate. From them many of the common sense ideas and happy illustrations that distinguished his most taking speeches were drawn. There was nothing aristocratic about him either in dress or bearing."

Recently the accomplished writer and author, Dr. Rob Morris, of Lagrange, Ky., contributed a series of papers to the leading daily of the State, entitled "Jesters With Whom I Have Jested." From one of those papers the following extracts are made:

"As I remember him, Ben Hardin was singularly attractive in person and manner. The pert and nimble spirit of mirth seemed to surround him as with a halo. His eyes were piercingly bright. His forehead was capacious and square. In his prominent cheek bones there was a suggestion of the aboriginal, and the same was apparent in his oratory. Yet his good things were always delivered in a fine, quaint, graceful fashion, that reminded me of Felix Grundy and Tom Corwin. * * * Other admirers characterized Mr. Hardin's methods of sarcasm by various terms. Collins says he was pungent, sarcastic, pointed, and energetic—making him an antagonist to be feared. The editor of the old *National Intelligencer* warmed over him and his powers of conversation. George D. Prentice, in one of his terse paragraphlets, termed him a diasyrm, and when I demanded the definition of so awesome a title, he derived it from *diasuridzo*, which, he said, meant to mock, hiss, and ridicule.

"Mr. Prentice was a great admirer of Ben Hardin, and many a joust of humor had the two men, wherein a wealth of fancy and of language was served out. I heard him say of Ben Hardin, that in his prime, when addressing a Kentucky audience from the steps of some old-fashioned court-house, his jokes fell a hissing shower of hot shot into all parts of the assembly, stirring the hearers like an irruption of hornets. This description is verified by the recollections of others not too young to remember a man whose work was finished a third of a century since. * * * To conclude, Ben Hardin knew exactly the pulse of the average jury, and, although keeping his arguments and appeals upon the popular level, he never condescended to vulgarity. He possessed a singular susceptibility. He was open to every sense of intellectual enjoyment, and in his generation represented in his own district the position which Chauncey Dupuy and S. S. Cox represent as humorists at the present time in New York."

Among the restless and nomadic Americans, one interesting fact has often been verified, and that is, that those swept westward by the tide of emigration retain the most vivid recollection of scenes and events in the old homes left behind. That chapter of life seems closed, and when the book of memory is again opened, the old scenes and old times are as fresh as if recorded yesterday. Subsequent occurrences have not blurred nor cross-lined the long-hidden page. To the pen of one of these emigrant Kentuckians, Hon. Martin D. McHenry, of Iowa, allied to some of the best blood of his native State, and formerly prominent in its politics, and long an associate of Mr. Hardin, the readers of this work owe not a little. Leaving Kentucky shortly after Mr. Hardin's death, to him, no doubt, it seems but yesterday since he last saw the tall, auburn-haired, big, and busy-brained friend of his early manhood. Especial weight is due his estimate of Mr. Hardin's character. Says Mr. McHenry:

"I will say that, during all my intercourse with him, and with the hundreds and thousands who knew him well, and among whom I lived until I was fifty years of age, I never heard any man call in question the truth of anything he said, or the good faith or reliability of anything he promised. Ben Hardin's positive, intelligent statement of facts needed no corroboration. It was an end of controversy. His distinct, laconic, defined promise of assurance needed no indorsement. Any man who knew him felt satisfied that it would be fulfilled, and asked for no witness to perpetuate the recollection of it. It was enough that Ben Hardin had said that it should be done."

In conducting some inquiries respecting Mr. Hardin, near four decades after his death, in the vicinity of his old home, and amid the scenes where he achieved his career, one significant fact has been observed, and that is, that almost every one that ever met him bore away some of the intellectual ingots that he profusely scattered along his pathway. It is a slight circumstance, but a most forcible illustration of the mental force of the man.

"Since I have been judge of this district," writes Hon. Charles A. Hardin, of Harrodsburg, "in which Mr. Hardin lived and practiced law, I have been astonished at the deep and wide-spread impression he everywhere made upon the people. Every man who ever saw and heard him in the court-house, or on the hustings, has some vivid recollection of his appearance and manner, and can repeat some anecdote or illustration he used."

His intellectual equipment was tersely and aptly epitomized in a speech delivered in the Kentucky Legislature in 1867, by Hon. R.

M. Spalding, representative from Marion county. Alluding to Mr. Hardin, he said: "In original genius and natural reach of intellect, perspicuity of thought and power of analysis, in wit, in bitter and withering sarcasm, and invective, no man in the State was his superior."

Such are some of the things that others said and thought of him.* Further estimates of his character are made in describing him as a lawyer, and in alluding to the domestic and other special phases of his life. But to justly estimate it, will require a careful study of his whole career, from the humble beginnings of the farmer's boy, until the death of the lawyer and statesman, full of years and honor.

It will be nowhere pretended in these pages that Mr. Hardin was faultless, or his character free from infirmities. The diamond has flaws and there are spots on the sun. Compensating for his failings, however, he possessed a host of manly virtues. He was no Pharisee, and had a whole-souled and abiding contempt for a hypocrite. His shortcomings were those of his day and locality—and of genius and power in all ages. While calumny was ever snapping at his heels, he averaged in personal virtue with his associates. That he was "no saint," doubtless made him a broader man. He might well have justified himself with the reasoning of the philosophic Franklin:

"For something, that pretended to be reason, was every now and then suggesting to me that such extreme nicety as I exacted of myself might be a kind of foppery in morals, which, if it were known, would make me ridiculous; that a perfect character might be attended with the inconvenience of being envied and hated; and that a benevolent man should allow a few faults in himself to keep his friends in countenance."†

* See Appendix, note E. † Franklin's Autobiography.

CHAPTER XXXVII.

CLOSE OF PUBLIC LIFE.

THE constitutional convention completed its labors in June, 1850. For a year following that event, Mr. Hardin was occupied with professional pursuits and the care of his private affairs. In the summer of 1851 he became a candidate to represent the Nelson district in the Senate, and in August was elected. In this it may well be assumed that he had some motive beyond the mere honor or the small profit of a seat in the State Legislature. Whether he sought some favor within the power of the Legislature to bestow—for example, the United States Senatorship, or, as seems more probable, desired to participate in originating, shaping, and completing that legislation necessary to put in working order the Constitution he had labored so zealously and diligently to construct, is matter for conjecture.

The first governor under the new Constitution was chosen that same August. The Whigs had nominated Archibald Dixon, of Henderson, for governor, and John B. Thompson, of Mercer, for lieutenant-governor; the Democrats, Lazarus W. Powell, also of Henderson, and Robert N. Wickliffe, of Fayette. In the selection of tickets each party had acted with undoubted wisdom and sagacity. All four were excellent orators, were well known throughout the State, had had large experience, filled many honorable posts with credit, and enjoyed the confidence of their respective parties. Dixon was a dashing leader—a political Murat—brave, impetuous, and fiery, and widely separated from the emancipation element, at that period supposed to lurk in Whig coverts. Powell, to profound political acumen, united a magnetic quality of winning and holding friends, and was a very Talleyrand in party diplomacy. Wickliffe, nicknamed "greasy Bob," was a talented scion of an old and influential family, whose very name was a tower of strength. Thompson—genial Jack Thompson—was the prince of good fellows, whose heart had been bereaved by death in his youth, and, thereafter, he had given all his affections to his friends, and these were mankind in general. The campaign was prosecuted with vigor, but Mr. Hardin took no part; in fact, he had scarcely

recovered from an antipathy to the gubernatorial office acquired some years before.

The result was that Powell, Democrat, was chosen governor, while Thompson, Whig, received the second place. It is, and has always been, a notable characteristic of Kentuckians to wear party harness very loosely, when the aspiration of a "clever fellow" (whereby is meant a genial, open, and generous spirit) is at stake. Powell and Thompson, falling in this category, outran their respective party strength.

During the following autumn, Mr. Hardin made a horseback journey of eighty-four miles to the small town of Calhoon, whither he went to visit his old friend Judge John Calhoon, then in ill health. Hartford was in his route, and there he lodged for a night. Referring to this occasion, Hon. Henry D. McHenry says: "I remember the last time Mr. Hardin was ever in Hartford. I called upon him at the hotel, and invited him to my father's house, but being informed of my father's absence from home, he excused himself. During the interview that ensued, I asked him about the story I had heard of the incredible distance he had thrown a stone in his school days. He said it was quite true, and he and I walked to a point on the hill, south-east of the present jail, which he designated as the spot where he had stood and thrown to the bank of the creek, distant four hundred and seventy-five paces. He described how he had cut soft stones in the shape of a watch crystal and learned the art of throwing so the concave side remained downward. He thus won a wager made with some boys. On the following day, I accompanied him a dozen miles on his journey."

He remained several days at Calhoon, during which time, the author, barely in his teens, remembers to have seen him—the first and only time. An old man sitting on the open porch of the principal hotel, his freshly-shaven face having a tendency to healthy reddishness, apparently of large frame, becomingly dressed, and seemingly wrapt in revery. Such was the picture. It is remembered that he called on Mrs. G——, a widow of the town, not far from his own age, whom he had known in girlhood, and had not met in the interval. He had been an admirer, and jocularly professed to be much shocked to see no trace of girlish beauty left; but his old flame, not regarding the subject a matter for jest, took his remarks in dudgeon. On his return home, he observed to a person he met that death had laid its heavy hand on his old friend Judge Calhoon, and mentioned

certain signs of physical failure, which he rightly regarded as precursors of dissolution. Yet, while enjoying vigorous health and strength, death stood still near the speaker.

The Legislature convened Monday, November 3, 1851. Its members, for the first time, had been chosen under the provisions of the new constitution. It had been provided by that instrument that one-half of the senators chosen should hold for two years, and the remainder four, and that, on the assembling of the Legislature, the length of the term should be determined by lot. Mr. Hardin drew a short term. Among his colleagues in the Senate, may be mentioned several who had been associated with him in the constitutional convention: William Preston, Richard D. Gholson, Thomas N. Lindsay, and James W. Irwin. Other well-known names were: Martin D. McHenry, of Shelby; Preston H. Leslie, of Monroe; John C. Walker, of Meade, and Sidney M. Barnes, of Estill. The House contained a considerable number who had sat with Mr. Hardin in the convention, and not a few brilliant men who had missed or not sought that honor.

No attempt will be made to trace the course of legislation during the session, nor to refer to the various and important questions discussed and decided. The most exciting events that arose were the election of two United States senators, something that rarely happens the same session. Why it happened on this occasion will presently appear. The term of Hon. Joseph R. Underwood, one of the Kentucky senators in Congress, was to expire March 4, 1853, and it devolved on the present Legislature to elect his successor. On joint ballot, the Whigs had a majority of eight over their Democratic adversaries, and so it was well understood that only a Whig could be a senator.

At the opening of the session, Mr. Crittenden's name was brought forward by his friends, he at the time being absent at Washington, a member of President Fillmore's cabinet. His claims were not only based on his personal virtues and public worth, his long experience, his talents, and his patriotism, but also on the ground of party obligations. In 1848, Mr. Crittenden, at the behest of the Whig party, resigned his seat in the United States Senate to make the race for governor. It was urged by his friends that he had sacrificed the greater honor, already in possession, for the governorship, only to be obtained by a laborious struggle. He had borne the banner of his party with honor and to victory. But, notwithstanding all this, there was

lively opposition to Mr. Crittenden's senatorial aspirations. That respectable element in his party, disrespectfully known as the "outs," insisted that he had been in office a lifetime; that, however great his services, he had been fully rewarded, and that justice demanded that he stand aside, and let others share in party honors.

The Democratic slogan, "rotation," so vigorously proclaimed in the then recent constitutional convention, was being echoed through the Whig ranks. Mr. Crittenden had, perhaps, not been sufficiently pronounced in his opposition to emancipation to win favor with certain ultra partisans in the pro-slavery wing of his party. Still, another unfortunate circumstance was a cloud on his senatorial sky. Mr. Clay had ceased to be his friend. The origin of this breach of ancient and oft-tried friendship is traceable to the presidential contest of 1848.

The Whig party had well nigh despaired of ever attaining national success on its defeat in 1844. As the election of 1848 approached, however, its hopes revived. The eyes of its leaders, with a common impulse, were turned toward the victor of Mexico—General Zachary Taylor. It is true General Taylor was not a statesman, nor versed in the policy of parties, or the administration of civil affairs. He was accounted a brave and honest man; a successful soldier, and the laurels of the Mexican war were fresh upon his brow. These virtues, added to the fact of his being a Whig, constituted his claims and qualifications for the presidency. Yet, as victory with Taylor seemed practically certain, the Whigs had early determined upon him as their candidate. Mr. Crittenden had very positive convictions on the subject, which he had freely expressed. It was understood that Mr. Clay acquiesced in these views until within a comparatively short period preceding the meeting of the national convention. But he visited the Eastern States in the spring of 1848, and while there had received assurances that he could not only be elected to the presidency, but that he could obtain a larger vote than General Taylor. On his return to the West, he accordingly announced himself a candidate in a published card. Mr. Crittenden immediately notified General Taylor's friends that, in obedience to both public duty and private inclination, he would support Mr. Clay. Kentucky, however, was so largely committed to General Taylor, that it was vain to hope for more than its formal support for Mr. Clay, and even the accomplishment of that much was matter of doubt. Mr. Crittenden, and Kentuckians generally, recognized this as the situation, although Mr. Clay did not. On the first ballot, in the Philadelphia convention, seven of the twelve

Kentucky votes were cast for Taylor, and on the fourth and decisive ballot, eleven were cast for him and but one for Clay. Defeat was made especially bitter to the latter by the disloyalty and faltering of his own State. He thought that if Mr. Crittenden had not procured, he, at least, had connived at the result. It is probable that he had been entirely neutral. He did not believe that, if nominated, Mr. Clay could be elected. This want of faith was the sum and substance of his sin. But Mr. Clay was exacting with his friends, and lack of zeal was an offense which his implacable nature could neither overlook nor forgive. So it was that in the senatorial canvass of 1851, Mr. Clay's influence was thrown in favor of Judge George Robertson, who had been chosen speaker of the House.

There was still another Whig coterie in the Legislature to whom neither Crittenden nor Robertson were acceptable. William Preston, Senator from Louisville, led these, who pronounced in favor of the defeated candidate for governor, Archibald Dixon. The dwellers at the State capital (which was Mr. Crittenden's home) supported him with unanimity, and invoked all the powers of the lobby. Entertainments were of nightly occurrence—in the interest of Crittenden. On the floor of the House, Thomas F. Marshall (who had once been his law partner) sounded his favorite's praises with that chaste and stirring eloquence peculiar to himself. This was parried by the charge that Marshall attributed Clay's political success to Crittenden's friendship, the purpose being to widen the existing breach.

Notwithstanding Whig ascendency, and despite Crittenden's superior strength, yet, it availed not, because of the refusal of the minority to enter a party caucus. For the greater part of a month, the canvass was waged with spirit and vigor. But the factions agreed on nothing save opposition to Crittenden. The friends of the latter urged the postponement of the election until another session of the Legislature, but this was opposed. For some time, Mr. Hardin kept his own counsel on the question that excited his colleagues. His relations to all the aspirants were kind. If he had lurking aspirations himself, he said nothing to indicate it. For some reason, Mr. Crittenden's friends conceived that Mr. Hardin opposed him. The former being notified of it, wrote about it from Washington as follows:

(*Mr. Crittenden to Orlando Brown.*)

"WASHINGTON, Nov. 12, 1851.

"DEAR ORLANDO: Before this can reach you, the senatorial question will have been disposed of, and, as I anticipate, by a postponement. Some

few letters, and particularly two received from Morehead, lead me to that conclusion. Such a result is not the most gratifying to me, but I can bear it calmly and patiently.

"I shall feel some curiosity and interest to know the course of some individuals in respect to this election, and will thank you for the information. The course of Judge Robertson and Mr. Dixon does not surprise me, though, as I am informed, they have displayed a sort of personally hostile opposition to me, for which I never gave either of them a cause.

"I understand that my old friend, Ben Hardin, speaks kindly of me, but opposes my election. I confess that in this I have been disappointed and mortified. He and I are contemporaries. We have been long associated, and have stood together as friends through many years. The path which remains for us to travel is not very long, and I regret that he has found it necessary to part from me on this occasion. I do not mean to complain of him, but only to express my regret. My feelings and my memory suggest to me much more on this subject, but I only add, that I think if Hardin had considered the matter in all its points of view, his judgment, as well as his friendly feelings, I doubt not, would have decided him to take sides with me rather than my opponents. There is not the least unkindness toward him mingled with the regret I feel on this occasion, and, as the matter will all be over before this reaches you, I am willing he should know it. Indeed, I wish you would inform him how I feel, and what I have here written in regard to him.

"What part does our Frankfort senator and representative take? Farewell. Your friend,

"J. J. CRITTENDEN.

"ORLANDO BROWN, ESQ.

"P. S.: To my good friends—and better never were—give a hearty shake of the hand from me.

"J. J. C."

Crittenden's kind expressions were read to Mr. Hardin, and Mr. Orlando Brown's allusion to its effect, evinced that neither age, nor the rough controversies of life, nor its disappointments, had dulled the finer sensibilities of the "old Kitchen Knife." Brown mentioned the matter in a letter to Crittenden:

(*Orlando Brown to John J. Crittenden.*)

"FRANKFORT, December 3, 1851.

"MY DEAR SIR: I propose to say a few words to you about the senatorial election. You and your family and friends are all greatly indebted to Mr. Thomas F. Marshall for his devotion to your interests during this crisis. He has surpassed himself as an orator in presenting your claims to the gratitude and love of the people of Kentucky. I read to Mr. B. Hardin what you said of him, and the old gentleman's eyes filled with tears. He exclaimed, with vehemence: 'My God, sir, it is all a mistake! I have been for him, am for him, mean to be for him!' And he has been making good his words. Mr. Abraham Caldwell, of the Senate, and your fellow-soldier, Cunningham, are the most reliable of your friends. Captain Hawes is at our head, and is as gallant a leader as we could have. Neither Bell, nor Helm, nor Brock, nor Davis have come near us. The true policy of

your friends is to refer the whole subject to the people. With the people, thank God, you are safe! You will probably be approached by some one before long, and may be induced to say: 'Rather than embarass my friends any longer, take my name off the list.' Let me beg of you to say no such thing. You are not here; you do not know how things are working. Dixon's election will be a Democratic triumph. He and his friends are afraid to go back to the people. If the election is postponed, you will be the means of bringing the Whig party again into line, and with you as our standard-bearer we will triumph in '53. I remain sincerely yours,

"ORLANDO BROWN."

To this Mr. Crittenden rejoined in a manner highly creditable to his generous nature:

"I was touched to the heart at what you tell me about my old friend (for such I may now call him) Ben Hardin. I felt like breaking at the root when I heard that he was against me, for in the days of our youth—of our growth—we were together, and have passed thus far through life in more of amity and good-will than falls to the lot of most men occupying our position. Upon reading what you wrote me, my eyes were not dry. Time gives a sort of sacredness to the feelings that arise from old associations and friendships. I wish I could live long enough, or had the means of repaying, Orlando, all the debts I owe my friends. But therein I am bankrupt, indeed."

On December 10th, the Whig leaders finally agreed to go into caucus, it being stipulated, however, that neither the name of Mr. Crittenden nor Mr. Dixon should be presented. On the meeting of the caucus a great number of ballots were had in a single evening before a result was reached. It was a free-for-all affair, in which first or last nearly every prominent Whig in the State was complimented by a vote. The favorites, however, were the lieutenant governor—Thompson—Senator Preston, Representative "Cerro Gordo" Williams, and the speaker, Judge Robertson. The result was somewhat unforeseen—Thompson being nominated.

Judge Robertson had been very sanguine of success, and a touch of chagrin may be discovered in his allusion to the result. Said he:

"Between Crittenden and Dixon the balloting was continued for many days, some members, who were opposed to both of them, putting up a third man on each successive ballot. At last, our party being in imminent danger of dissolution, Mr. C. and Mr. D. were both withdrawn, and a caucus assembled to select a candidate. Some of the members, who were excited against me, arranged a platform which would be most likely to defeat the strongest man, which was, that every member might nominate whom he desired, and that no nominee should be preferred until he had successively beaten every

other. To illustrate the effect of the programme, we may suppose that every letter in the alphabet was in nomination (and it was in this case nearly so). A would be ahead at the first ballot; then he would have to run against B, for whom all, or nearly all, the friends of the other nominees would vote, for the purpose of breaking A down; then B would have to run against C, who would, in the same way, beat him; and so on, the same result would follow until Z would beat Y; then Z would run against A, who, of course, would in like manner beat him; and so the same farce would be repeated. And just so it was in this instance. On the first ballot I was foremost; C. S. Morehead was next; he then beat me, and himself was beaten, as others were successively until John B. Thompson, who was the lowest on the first ballot, was ahead; I then beat him; and the same round was run again, with the same results, until eight of my friends, despairing of any conclusion of such a farce, left the scene. After they had gone, a third round was commenced between Thompson and me, when, as I believe from various information, I beat him again. But the chairman (my senator) declared him nominated. Many members remonstrated, and denied, moreover, that he could, even had he beaten me, have been nominated until he had beaten every other competitor. But the chairman persisted, and adjourned the meeting in a storm of clamor, declaring that Thompson was nominated. This having gotten out, it was thought best not to attempt to correct the blunder; and, in this way, Thompson, who was the weakest in the race, was made the senator. There was no doubt that I, in a fair trial, would have been nominated and elected."*

On the following day (December 11th), Lieutenant-Governor Thompson was elected United States senator, receiving seventy-three votes, to sixty five cast for Francis P. Stone, Democrat.

At this period, Mr. Clay was the other sitting senator for Kentucky. Old age and failing health had warned him that he must shortly quit the cares, toils, and ambitions of life. It was not anticipated, either by himself or his friends, that he would survive until the meeting of another biennial session of the Legislature. If he died in the interval, the vacancy thus created would be supplied by appointment by the Democratic governor, and, of course, by one of his own party. This contingency, Mr. Clay and his party friends desired to prevent, and it was understood that, to this end, before the session adjourned, his resignation would be tendered. But the limit of the session had nearly approached without any step toward resignation. Mr. Clay was an invalid in Washington city, and tidings came that he constantly declined in vitality and strength. At the close of December, however, came the long-expected resignation,

* Life of George Robertson, page 66.

providing by its terms that it should not go into effect until the succeeding August. Mr. Clay desired to die in office, and he estimated that, by this arrangement, he would not survive his term. On December 30th, Archibald Dixon was, after a brief contest, chosen to fill Mr. Clay's unexpired term. Mr. Crittenden did not desire the fractional term, and so his name was not mentioned. The Democratic governor and his friends had anticipated that it would devolve upon the executive to fill the vacancy, to be caused by Mr. Clay's death, by appointment. The proviso in the latter's resignation seemed effectually to preclude this, to their great dissatisfaction. But death sadly disarranges the plans and blights the hopes of politicians, as well as the laity. Mr. Clay died June 29th, and thus afforded Governor Powell opportunity to bestow the senatorship, for a few weeks, on that time-honored Democrat, David Merriwether, whose unstained public career has extended to this day.

Mr. Hardin was not given to letter-writing, and little of what he did write yet remains, and most of that consists of laconic notes of business. A lame hand made penmanship laborious and his writing almost illegible. That he could have written entertaining letters may be deduced from the following specimen, dated during the present session of the Legislature:

(*Mr. Hardin to Governor William Johnson.*)

"FRANKFORT, December 4th.

"SIR: Your letters have been received and all you asked attended to. As to the young gentleman you spoke of, who wanted to read law with me, I regret to say I have determined to have no more law students. Butler Thomas and Mr. Skinner are here with their papers to cut off about three hundred votes from Nelson and add it to Spencer. I am preparing for them in the Senate, and I have no doubt I will defeat them. I must return Bardstown good for evil, for last summer the town did me much wrong, but that is nothing. I will fight for old Bardstown to the death. I did to-day report a first-rate bill for the congressional districts—to lop off Anderson and add Meade. I presume you get your paper, which gives you the daily news. Can you not get Riley and his wife found insane, so their committee can stop them from moving to Louisville?* Your old friend, etc.,

BEN HARDIN.

The following interesting account of Mr. Hardin's service in the present session, is from the pen of his kinsman, Hon. Martin D. McHenry:

"Mr. Hardin's last public service was rendered as a senator from Nelson county in the session of 1851–2—the first Legislature elected under the present Constitution. I had the honor and privilege of serving with him,

* This humorous allusion was to his son-in-law, the late Thomas W. Riley, of Louisville, who then resided at Bardstown.

being a senator from Shelby. The business of the session was truly important, as well as very laborious. We had laws to pass in some cases to meet the changes in the new Constitution, and the commissioners, who had been appointed for the purpose, reported to the Legislature in bill form a complete revision and codification of all the statutes of the State of a general nature, and we had to take up that work in joint committee, examine, revise, and, where necessary, amend every section, and pass the whole as one statute. It was truly gratifying to many of us that we had the aid of his large experience and sound judgment. He was not, it is true, a member of the joint committee, but those of us who had that work to perform found him always ready to aid us by his wise counsel. I enjoyed my association with him very much, admired and honored him as an eminently able lawyer and statesman, and loved him as a kind and patronizing kinsman. I did not regard him as at all failing from the effects of age. His health was good when we parted, and I little thought that I should never see him on his feet again."

The narrative of Mr. Hardin's public life must now be brought to a close. He can not escape that inexorable rule, applied in all ages, and among all men, of measuring capacity, ability, and talent by the success they have achieved. Yet it must be admitted that it is often an uncertain and delusive standard. Mr. Hardin had, by no means, achieved all that, in the condition in which he was placed, with the talents he undoubtedly possessed, and with the exercise of more wisdom in his public career, it was possible, and, indeed, practicable, for him to have attained. Slight, indeed, were the circumstances that had limited his political success, but these had been like the few extra pounds that retard the racer. He always carried weights. In the highest reaches of human effort, trivial, and often accidental, are the causes that determine defeat or triumph, obscurity or renown.

As a member of the United States Senate, an honor he coveted, Mr. Hardin would, undoubtedly, have increased his fame. His natural abilities, his great attainments, his broad statesmanship, and practical patriotism qualified him for usefulness and success in that arena. His strong conservatism would have tempered the heat that too often marked the discussions of the Upper House in his day. But he did not attain that honor, really never making a formal contest for it. He, indeed, in all his life undertook nothing in the way of office-seeking that he did not believe he could reasonably attain. He knew his strength, and was not less conscious of his weakness.

As a politician, he had the elements of both. He was, as elsewhere observed, neither a leader nor a follower. The only apparent exception to this was his career in the constitutional convention and

the votes that preceded. But his leadership there resulted from a popular movement for constitutional reform, which he rather led than originated. One reason why he was not a leader, was a deficiency of that personal magnetism that attracts and retains followers, especially followers among politicians. He could ingratiate himself with the masses of the people, but when he encountered other leaders he became their rival or their adversary. In his contests with these, he sought victory, not by conciliation, but by crushing and overwhelming. He was lacking in all the arts of the courtier; he belonged to the "Commons," not to the "Lords." The result was that while popular with the people he was not so with the politicians.

The people admired his talents and had confidence in his political integrity and ability. It was really a confession on his part when he boasted that he had sought no honor save at the hands of the people, whereby he meant to distinguish the people from those in power. He was rarely in favor at court. He had also a besetting infirmity that militated against his political success. He was resentful, and when he felt misused he often bided his time to avenge himself. It is an important political grace sometimes to forget. This was impossible for Mr. Hardin.

His neglect of his personal appearance was another inauspicious circumstance. For some offices and in some localities the time in State history has been known when indifference to dress was deemed a passport to popular favor. When the late William S. Pilcher, noted as a rabble-rouser years ago, was a candidate for mayor in Louisville, an Irishman expressed the sentiment of others besides himself when he "huzzaed for Billy McPilcher. Faith 'an he's the man for me—he's nayther proud nor daycent."

For some exalted offices the most unlettered of the masses of the people have always regarded certain outward proprieties requisite—on the principle that there should be an external sign of inward grace—and have resented their neglect. That Mr. Hardin never wore senatorial garments was a point against him. Popular ideals can not be disregarded without penalty. Slip-shod shoes, ill-fitting coats, and slouchiness would have overshadowed the valor of Achilles, and lost the Hebrew leader the laurels that crowned him on Pisgah's top.

CHAPTER XXXVIII.

MR. HARDIN AT HOME.

WHEN the mailed knight has removed his armor, only then we see the man. Although helmet, and visor, and breast-plate, and greaves are no longer worn in this unknightly age, yet mankind, in their intercourse with each other, encase themselves with an outward demeanor, quite as effectually concealing the grace and shapeliness of character. Only in the security and privacy of home is the reserve, characterizing public intercourse, laid aside, and only then and there does the man appear as he really is.

Mr. Hardin's residence at Bardstown was a commodious building of brick, of irregular structure. Originally a one-storied building, with two rooms in front, to this an addition had been made, on the left, of two stories, comprising a large hall and front room, and room in rear, with similar rooms above. These added-rooms and the hall were unusually large. The hall was entered by a front-door, and in the hall a staircase connected with the rooms above. A later tenant has added a veranda in front. The outer appearance of the house gave no suggestion of architectural thought. The only purpose, evidently, had been to roof in and inclose a given amount of space. An exception should be made as to the left gable, above which two chimneys ascended, which were connected by a horizontal wall that manifested some intention of accompanying them to their tops, but stopped short of that point. Perhaps some fanciful architect caught this hint from the webbed feet of water-fowls. With an ample porch and rooms to rear, it was, altogether, a commodious dwelling, and not suspected, in its earlier history, of being inconvenient, whatever judgment might be passed on that question now. If lacking the graces of colonial or Queen Anne architecture, or the strength of the Gothic, yet it had within, the elements—elements eluding the reach of wealth and the skill of the architect—of an old-fashioned, hospitable, warm-hearted Kentucky home. The house was surrounded by ample grounds, stretching down to the street, to which a goodly number of forest, fruit, and ornamental trees added grace and comfortable shade.

Mr. Hardin s home was long a happy one. In its sacred precincts, austerity was laid aside and the bitterness of sarcasm and invective carefully sheathed. The gentle and benevolent sentiments of the heart had full and free action. Good humor and hospitality were in the ascendant. Hearty good fellowship inspired him and made him the most delightful of companions.

"I remember Ben Hardin," writes a daughter of the late Francis P. Blair, Sr., "for, though politically opposed, he was on the kindest terms with my parents, and always a heartily-welcomed guest at their home. Nothing was enjoyed there more than his stories, rough as some of them were. His true-hearted friendship to my father on one occasion was often dwelt upon and gratefully remembered by all of us."* If guests came to his home, they were welcome, no matter what their rank or station. The dweller of the cabin in the "Knobs," found the same open, unreserved greeting in the Hardin mansion that met the honored statesman, or the citizen boasting birth and fortune. The household was a miniature republic, where the worthy always found ready and hospitable admittance, and were treated with perfect equality. Its members were proud, not of themselves, but rather each of the other.

Mr. Hardin's mother survived until he had reached the zenith of his fame, yet he was always the affectionate and loyal son as when her clear head and steady hand guided him safely over all the pitfalls of youth. In domestic matters, he ever yielded unqualified deference to the good sense of his wife, to whom he was tenderly attached.

Undoubtedly, the influence of "Betsey Barbour," over her husband, proved most beneficent. Descended from a stock of proud and gentle blood, yet vigorous withal, reared in a home of wealth and refinement, and worthy every honor he could win for her or himself, she had furnished not only an incentive to effort, but proved herself a "lamp to his feet and a guide to his way." She curbed the excesses and rounded the angles of his character, purified his impulses and aspirations, and, by her loving inspiration, gave wings to his genius.

Toward his children, he was fond and indulgent. He found especial delight in their manifestations of sprightliness. The affection he felt for his own offspring, begot a tenderness for all children. Dr. Burr Harrison was an old friend—personal and political. He was prominent as a physician, and well known as a politician. For a while, he was a competitor of Mr. Hardin, when the latter was a candidate for Congress in 1833. About this period, a personal mis-

* Mrs. Admiral Lee.

BARDSTOWN IN 1887.

understanding occurred, and they ceased to speak to or recognize each other for a year. Dr. Harrison had always been Mr. Hardin's family physician, and, somewhat singularly, this relation was not terminated by the breach alluded to.

When in his visits to Mr. Hardin's house they encountered each other, they passed in silence. This unfriendly relation ended as whimsically as it had been maintained. The doctor one day happened to overhear Hardin talking very kindly and affectionately to one of his (Harrison's) children. "My God," said he, "I can't stay mad with a man that loves my children." And thenceforward their friendship knew no interruption.

A kind neighbor and a faithful friend, yet, he was not exempt from dislikes, and indulged no false pretense or concealments on the subject. Usually when at Bardstown, his time was spent in the court-house, at his office, at home, or at his mill. He had no place of resort other than these. On Sunday mornings, he would frequently walk into town, and engage in conversation with idlers he met about the streets. On such occasions, his conversation recruited his audience with marvelous rapidity.

His library was large and well-selected. Aside from works on the law, it was stocked with an abundant supply of general literature, history, biography, poetry, etc. It was one of the most valuable private collections in the State, and its owner was not a little proud of it. Among his books, he spent much of his time. He was a book-lover, and when in out-of-the-way places, where libraries were unknown, he would devour any insipid waif he could lay hands on, with a relish equal to that of the thirsty traveler of the desert drinking at a scant and muddy pool in a lonely oasis. He has been known to spend hours—at such times—absorbed with the contents of a primary school book, finding between its simple and rudimentary lines, knowledge and wisdom invisible to less discerning eyes.

By reason of a crippled hand, his penmanship was difficult. Perhaps this fact in part explains why he wrote so little. One who knew him personally and well, thought him qualified to have excelled in literary composition. To a lady who wrote gracefully, he suggested the abundant material for an historical romance based on Burr's conspiracy, and urged the undertaking.*

He was fond of manual labor. When at home, he frequently went to the fields where his slaves were employed. He not only directed them, but not unfrequently "lent a hand" himself. He sold a large

* Mrs Mariah Daviess, of Harrodsburg, Ky.

number of hogs one year, and the purchaser complained that he had not sufficient help to drive them to market. Mr. Hardin volunteered to assist, and spent a day thus. One of his most attractive resorts was a small saw and grist-mill, operated by water-power, on his home farm. Napoleon at the head of his army did not feel prouder than Mr. Hardin did in the proprietorship of that mill. He would watch the operation of its machinery for hours, in mute admiration. He assisted in getting logs to the saw and the lumber away, as well as filling the hopper and removing the grist. It evidently expressed to him ideas of power, progress, and philosophy, not revealed to ordinary observers. He labored about it not for the profit to result, but as a mark of his esteem and respect for a manufacturing establishment.

He had large orchards on his farm. On a certain season, when fruit was abundant, he resolved to manufacture brandy. He engaged a coppersmith at Bardstown, who yet lives to relate the fact,* to make several copper stills. He made brandy that season, though with what success is not known. The following year he prepared to resume operations, when he discovered that all his stills were missing. On investigation, he ascertained that some of his enterprising negroes had dismantled them, and sold them, for a trifle, as old copper, to an itinerant peddler. He vowed to open many vials of wrath on the buyer of those stills, and, for that purpose, to pursue him to the ends of the earth. But Mr. Hardin's wrath was of the fierce, fiery, and evanescent kind, rapid in explosion, and not less sudden in abatement. He never afterward manufactured spirits.

He began farming in early life. He acquired large tracts of land adjacent to Bardstown, which he cultivated with the labor of his slaves. When not professionally employed, he gave personal attention to his farm and mill. The farm was, however, usually in charge of the negroes, one of whom acted as foreman. He was an indulgent master, and averse to that discipline by means of which only a Kentucky slave could be induced to earn his daily bread. The result was, it required the aid of his professional income to support the home-establishment. He was not at all discouraged, or even disappointed, at these results, which he well understood and publicly acknowledged. He had a colored foreman, named Bill, whom he had implicitly trusted for a long time. Bill's management of affairs proved unprofitable, but he, notwithstanding, retained his master's confidence. A natural rascal, he finally became so bold in his thievery and mis-

* Wm. F. McGill.

doing, as to forfeit his position of trust. Mr. Hardin hired him to the proprietors of an iron-furnace, in an adjoining county, for a year. Bill did more work that year than he had done in many before.

To public observation he seemed hedged about with a cold reserve. To one who knew him long and well he appeared always to be an "absorbed thinker." At home, however, his cheerfulness and hopefulness were exuberant and perennial. He banqueted on good humor and all the more generously because of his cynicism elsewhere. But there were domestic events that overshadowed his good spirits. One of these, the death of his son James, occurred in 1842. Never of strong physical constitution, his health, at about the age of thirty, had declined, and consumption fastened upon him.

Graduating at West Point, at twenty years of age, James entered the army as lieutenant. After having served during some Indian troubles, he grew tired of the life in barracks, during a time of profound peace, and resigned. He next proposed to study law, but was dissuaded by his father, who conceived his talents did not suit him for that profession. He thereupon betook himself to the study of medicine. He first attended lectures at Transylvania, but received his diploma from a medical college at Philadelphia. He never practiced, but shortly afterward again indulged his inclination for the law by beginning its study. In due time he was admitted to the bar and began practice with prospects so auspicious as to exceedingly gratify his father. His character was marked by dignity, firmness, and an extremely high sense of honor. He was happily married to Miss Chinn, of Harrodsburg, a beautiful woman. But when life promised most, his health gave way, and he rapidly sank to a premature grave.

The death of his daughter Emily—Mrs. Palmer—occurred in 1845. It was said by one present, that the pathos of his allusion to this sad event, in his Owsley speech, was exceedingly tender and moving.

The untimely fate of his son Rowan, was the great sorrow of his last days. Originally named and christened "Rowan," after Judge Rowan—a breach which occurred between the latter and Mr. Hardin (perhaps about the "old and new court" epoch) caused "Ben" to be prefixed. But, by the name of Rowan he was ever known and called. He studied law, and came early to the bar and began practice. He also edited the *Gazette* newspaper at Bardstown for some years, and was a felicitous writer. He recruited a company during the Mexican war, and accompanied his regiment to the scene of

action, but saw no service of note, as hostilities were then about concluded. He represented Nelson county in the Legislature of 1848. He was conversant with current politics, and as a Whig orator was active in every campaign of his day. He and his father frequently canvassed together for State and National tickets, and often their audiences were divided as to which excelled in oratory.

A series of speeches in the State of Ohio, delivered during the presidential contest, resulting in General Taylor's election, were regarded in that day, by those who heard them, as unparalleled in eloquence and effect. Rowan Hardin's power of thrilling description and narration, said a competent judge, would compare not unfavorably with those of Sir Walter Scott. In 1851, he was appointed by President Fillmore, secretary of legation to Gautemala. During that year, in a secluded spot in the mountains of the Isthmus of Darien, he was murdered by an unknown assassin. His tragic fate was only discovered months afterward, when his bleaching bones were identified by papers found on the spot.

He was bright and vivacious, possessing rare colloquial gifts. He was not free from those vices of social life peculiar to a social nature. Confident, hopeful, and improvident, he took too little thought of the morrow. At the bar, his strength was chiefly in addressing the jury. Few men have been better equipped intellectually for the achievement of a brilliant career. "It fills me with sadness," writes one who knew him from boyhood, "when I recall his talents, and think of what he might have accomplished, and how he threw all away." He was the pride and idol of his father's heart—his father's favorite and weakness. Expressions of admiration for Rowan's abilities were so frequent as to attract the amused attention of Mr. Hardin's friends. Rowan was his paragon. "In the excitement over the Mexican war," writes Mr. Garland, then a student at Bardstown, "Rowan Hardin went to the seat of hostilities on his 'own hook.' Shortly after, having returned, he called a meeting at the old Baptist church for the purpose of relating his experience in Mexico and to recruit a company for the service. Rowan was a peculiarly gifted man, and everybody (so to speak) went to hear him. His father and mother sat near the speaker's stand. In one of his loftiest flights, while the crowd did not seem to know whether they were sitting or standing, 'Old Ben,' the tears running down his cheeks, turned to his wife: 'Betsey,' said he, choking with emotion, "I do believe he is a greater man than his father.' It was a proud night for these two old people."

On another occasion, on the elevated plateau where the court-house once stood, at Brandenburg, overlooking the waters of the Ohio, some hundred or so feet beneath, from which vistas of the river east and west stretched out for many miles, Mr. Hardin walked restlessly and uneasily to and fro. At length, that which he expected yet feared, the steamboat, came in view from above, that bore Rowan southward on his last journey. Silently and sadly he gazed upon the graceful vessel sweeping by, and as it faded in the west, raising his hand, and with a full heart: "Yonder goes the grandest man I have ever known. I shall never see him again—never!"

"The tragic death of Rowan," says General Preston, "was the great sorrow of Mr. Hardin's life, but no unmannerly complaining, either in private conversation or in public, revealed that sorrow, but, on the contrary, he always manifested a subdued pride and pleasure whenever he recalled the memory or alluded to the death of his favorite son."

CHAPTER XXXIX.

A LAWYER'S THEOLOGY.

APART from education, early influences, and youthful training, there is a side of human nature, either impressed with spiritual beliefs or which, in normal natures, is an utter blank, awaiting such impressions.

It may be a quality of mind or soul, or it may be a faculty or an instinct. The wild Indian, without revelation or teacher, without church or priest, yet has the faith of a "Great Spirit" impressed on his soul. It is no answer to charge to superstition these intuitive suggestions that come, whence, no one knows.

> "'Tis the Divinity that stirs within us;
> 'Tis Heaven itself that points out a hereafter,
> And intimates eternity to man."

That a descendant of the Huguenots, exiled for their religion, should have had an instinctive belief in Deity and revelation, seems in the natural order. That Huguenot faith, that caused its possessor to abandon home and country, cross the ocean (wider and stormier than now), and brave the perils of a savage wilderness for his faith, not only ought to have rescued his descendants from skepticism, but should leaven generations of that blood to come.

At what time Mr. Hardin first gave thought to subjects connected with the spiritual side of life can not be determined. For religion and its observances, he was early taught respect, and no youthful impulse or waywardness ever caused him to treat either otherwise. His devotion to his mother would have insured this much.

His beloved and faithful wife was a pious woman, and thus another tie bound him to the religion of his fathers. His devotion to her knew neither "variableness nor shadow of turning," from the bright day she became his bride to that dark one, when he heard the clods fall on her coffin. They were bone of one bone, flesh of one flesh, and kindred in spirit. "I have never," said he, "seen her on her bended knees, without feeling that I ought to go and fall at her side."

However far short he came of a religious life, yet, it is certain that from a very early age, he contemplated the time when he would make his peace with his Maker.

"I acknowledge very candidly," said he, on one occasion, "and I acknowledge it with a degree of shame, that I am not a member of any church. I have encouraged my family, black and white, to go to church, and I have contributed toward the erection of meeting-houses, perhaps, as much as any man, and no one is more devoted to the great Christian scheme than I am. But I have never played the Pharisee, nor prayed and bellowed in the public streets, nor proclaimed my religion from the house-tops."

While not free from the use of expletives, that had more strength than polish, yet he never used profane language. This assertion is based not alone on the testimony of those in position to know, but is consistent with his character. Although given to expressing himself strongly, yet he never used words save to express ideas. As much can not be said of many addicted to habitual profanity, who often hide their poverty of ideas by interlarding their conversation with oaths.

One, who knew him well, said Mr. Hardin was a great Bible student. He thought many portions of the Bible peculiarly eloquent, particularly the book of Isaiah. He was always religiously inclined, though not a member of a church until just before his death. He had a profound contempt for any man or woman who spoke disrespectfully of the Bible. In his religious opinions he was most decided. He believed in Christianity, in the existence of a God, and a state of future rewards and punishments. He had no sympathy with the Voltaires of his day—the Voltaires, the Humes, and the Paines—and enjoyed greatly the ironical satire of Dean Swift, in his petition addressed to Bolingbroke and his friend, who had published a tract against Christianity. To another, Mr. Hardin once remarked: "The first book for a law student is the Bible." Said a minister, himself a scholarly divine: "Mr. Hardin was an excellent theologian."* If this sounds extravagant, remember that the "Autocrat" has announced that "we are all theological students, and more of us qualified as doctors of divinity than have received degrees at any of the universities."†

It was not until he came to the bar that he began the study of the Bible. Indeed, he had read it but little, until after his marriage. One pleasant evening, early in his career, as his young wife was sitting at the front door of their residence awaiting his return from his office, she saw him approaching with a bundle under his arm. When he came in speaking distance, her first question was as to the contents of his bundle. "Well, Betsey, I will tell you; Rowan and the other lawyers are always quoting scripture on me in their speeches, and d—d

* The late Rev. S. L. Helm.

† Autocrat of the Breakfast Table, page 33.

if I don't intend to know as much of it as they do. This is a Bible." He was not only fond of Isaiah, as above observed, but also of Job. "I consider them (Isaiah and Job) the most eloquent I ever read, except the twenty-third chapter of Matthew, where it takes hold of those it calls Pharisees, hypocrites, and scribes, and says: 'Wo! unto you, ye scribes and Pharisees.'"

His mother was a member of the Baptist church, but his wife was a Methodist, and to the latter church he was always inclined. Said he, in 1849, "I am not a Methodist, but I am a lobby member, and I believe a good deal in that doctrine. I believe that good works go a great way toward getting a man into heaven; and that they are the best turnpikes and railroads upon which one can travel in that direction. There is a doctrine, once elected always elected, that I do not understand."

He was particularly fond of both vocal and instrumental music, and would frequently attend church to enjoy the singing, and would often weep under its influence.

"When at home," writes a valued correspondent, "he would frequently send for his niece and the writer to come to his house and sing for him. This was before he had made any religious profession, or disease or infirmity had given special warning to prepare for the hereafter. Among his favorite hymns were, 'Jesus, lover of my soul,' 'Show pity, Lord! oh, Lord, forgive,' and 'An alien from God and a stranger to grace.'" *

The following extract is from Dr. Redford's "History of Methodism in Kentucky:"

"Ben Hardin and his family were among the best and earliest friends of the Methodist church in Bardstown, and, in the course of years, became members of its communion. Mr. Hardin was peculiarly attracted by Methodist singing. This was the charm of Methodism to him. He would diverge at any time from his regular road on his tour to courts, to enjoy the luxury of camp-meeting songs. May Methodism never lose those warm-hearted and energetic appliances which won the heart of that great lawyer.

"An anecdote, related to me both by Marcus Lindsey and Ben Hardin, ought, perhaps, to be preserved. Mr. Hardin had turned aside from his route to court in Hardin county, to stop at a camp-meeting, which Mr. Lindsey was attending. About midnight, Mr. Lindsey observed Mr. Hardin about to lie down on some clapboards between two tents. He kindly invited him to sleep in the preachers' tent. Accordingly, his guest laid down, but about two o'clock, a tremendous shouting was raised in the altar over souls converted. Mr. Hardin sprang up very suddenly, and, rubbing

* Dr. W. A. Hickman.

his eyes, exclaimed, with an oath, that if they kept on that way, they would kill the devil before day. Mr. Lindsey happened to be near, and remarked to him: 'That would be bad business for you lawyers, Mr. Hardin.' 'Yes,' said Mr. Hardin, 'quite as bad for you preachers, Mr. Lindsey, for it would break up both professions.'"

The religion of the pioneers was, in a high degree, emotional. Spiritual regeneration, in those times, was attended with wild shoutings and mental perturbation, seemingly little short of insanity. The veritable stories told by pioneer historians of religious enthusiasts falling in swoons, beholding visions, and possessed of the "jerks" are rapidly assuming the tinge of romance. While Mr. Hardin was always a "believer," his clear judgment and sober reason caused him to shrink from participation in such excesses, and to question the divinity of their origin.

The late Bishop Hubbard Hinde Kavanaugh and Mr. Hardin were long, warm personal friends. Mr. Hardin was a very infrequent attendant on public worship, but was always in the sanctuary when Kavanaugh occupied the pulpit at Bardstown. That was in the days of the bishop's itinerancy—before he wore the highest honor of his church. But he was then conspicuous for piety, learning, eloquence, and rare mental gifts. Coupled with these, he possessed a racy wit, and herein was "the one touch of human nature," in which originated that allied friendship with Hardin that death only sundered.

While partial to the church of his wife, yet he was broader than any church in his views and feelings. When his son William died, while a student at the Roman Catholic college of St. Joseph, of Bardstown, although little more than a child, no objection was made to his receiving the consolations of that church. Afterward the eccentric William Downes, a minister of that anti-missionary branch of the Baptist church, which traces its origin to apostolic times, fell into a theological dispute with a Catholic priest. Mr. Hardin acted as the friend of Downes, and a debate was arranged. He supplied Downes with a handsome suit of clothes to wear upon the occasion, and, according to Spencer (the Baptist historian), the latter came off triumphant. In the constitutional convention, Mr. Hardin stood almost alone with Rev. Dr. John L. Waller, in the unsuccessful attempt to defeat the apparently needless restriction against clergymen occupying seats in the General Assembly. It was charged to Mr. Hardin, to the discredit of his candor and sincerity, that "he was all things to all men," that he talked agriculture with the farmer, cooking with his

wife, medicine with the physician, law with the lawyer, politics with the politician, etc. He, undoubtedly, was fond of discussing the Bible and theology with the clergy, though his discussions never degenerated into disputes. His mind was full of that thirsting after truth that caused it to drink at every wayside spring that babbled and flowed by the path of life.

Mr. Hardin lived in the constant exercise of many virtues essential to Christian character. No one ever suspected him of being in the slightest degree a hypocrite or pretender. He was what he was and scorned all pretense. Hypocrites, pretenders, upstarts, and parvenus were his especial abhorrence. His honesty and integrity were never questioned. His word was ever his bond. Much as he delighted in professional victory, it was never charged that he won it by falsehood. He might, in discussing a case, ignore the law and the facts, but if he alluded to either he stated them fairly. He scorned the arts of sophistry and misstatement practiced by small and crafty minds. He was sober and temperate in his habits. He delighted in secret charities, and instances of generous deeds could be recorded touching in the delicacy with which they were done. In him, the widow and the orphan, the ignorant and the helpless, found an unfailing and constant friend. He always acted on the idea, though bound by no religious tie, that an account of his deeds was being kept, that much misdoing was punished in this world, but that somewhere in the universe and at some period in the cycles of time, the account would be settled, and that full and complete justice would be done. Such a man, so imbued by study with biblical wisdom, had not far to go to find the straight and narrow path that leads to life eternal.

CHAPTER XL.

THE END AND HOW IT CAME.

"There is a time, we know not when,
There is a line, we know not where."

MR. HARDIN'S sixty-eighth spring was less bright to him than its predecessors. Year by year the hopes and ambitions of an exuberant manhood had grown more subdued. Professional success, the honors of office, a wide-spread fame, a comfortable fortune, a happy home—all these and more had attended and crowned his career, and these, undoubtedly, alleviated the burden of life. But age was making inroads on bodily strength and endurance, and the spirits grew less elastic. His gifted and manly sons, whom he had idolized and from whom he had hoped so much, were dead before their time. Rowan, his best beloved, during the previous year had fallen by an assassin's hand in a foreign land.

Old friends, with whom he had started life, were rapidly passing down to "dusty death," leaving him with the sensation of lingering when the banquet of life was done. If the days were not already "few and evil," such a period seemed approaching. But he indulged no idle or senseless repining. "Work while it is day," was the motto on which he had acted all his life. No task was shirked, no duty neglected, no engagement unfulfilled. Yet his habit of revery and self-communion grew more marked and of more frequent recurrence.

On the adjournment of the legislative session of 1851–2 he returned home from Frankfort, and resumed his professional labors. On a bright Sabbath day in May he left Bardstown to attend court at Lebanon. His riding-horse inclined to be easily scared, and his saddle-girth was defective. As he was setting out, Mrs. Hardin expostulated with him about incurring the danger of the bad girth, but with a smile and a jocular remark he rode away. He intended to lodge that night with his son-in-law, Dr. Palmer, near Springfield, and so he did. The following morning, in attempting, while mounted, to open a gate that led to the turnpike, the treacherous saddle-girth broke, and he fell to the ground. He was so injured as to be unable to rise. Dr. Palmer,

who had witnessed the accident, hastened to his assistance. As Doctor P. approached, Mr. Hardin looked up from his prostrate position, and, with a smile, repeated the lines from Burns:

> "How many lengthened sage advices
> The husband frae the wife despises."

As his daughter remarked of this accident, "it was the beginning of the end." By the fall the sciatic and sacral nerves were bruised. His wife brought him home to Bardstown in a carriage, but all that affectionate care and nursing could accomplish under the best medical advice, while prolonging life, afforded no permanent relief. Mr. Hardin soon realized that his recovery was doubtful, and that his concern in the affairs of life drew to a close. His sufferings were great, but were borne with patient and philosophic fortitude. Many weary nights his neighbors and friends watched at his bedside. Among these watchers was one, then a law student of Mr. Hardin—since distinguished by many high offices and now attorney-general of the United States—A. H. Garland. "In his last illness," said Mr. Garland, "I sat up many nights with him, and he was pretty much the same 'Old Ben' he was when well." His negro man, Bill, a faithful and tried domestic, fulfilled to some extent the duties of nurse, which, however, fell chiefly upon Mrs. Hardin. He often interrupted the tedium of confinement and suffering, and illustrated the saying, "the ruling passion strong in death," by some humorous observation or recital.

One night as the weary hours dragged their slow length along, Bill, who aspired to freedom (but to whom freedom would have manifestly been a misfortune), concluded it was an auspicious time to urge his wishes. "Mas' Ben," says he, interrupting a protracted silence, "what will become of poor Bill if you should die?" "Ah! Bill, I don't know," answered the sufferer, and the matter dropped. After the lapse of an hour or so, Bill concluded to introduce the subject again: "Mas' Ben, you are mighty sick." "Yes, Bill, I am mighty sick." "I hope," rejoined the negro, "you is going to get well, but I don't know what is going to become of poor Bill if you should die." "Well, Bill, I can tell you exactly what will become of you; I have already made my will and appointed Tom Linthicum and Bill Johnson, my executors. In a few months after my death, Tom Linthicum will take you to the court-house some day, and there offer you at public sale. There will be —— and —— and —— (naming several noted

negro traders who bought slaves in Kentucky for the southern market, and whom the negroes dreaded not one whit less than the devil himself), and they will come up and look at you, and feel your arms, and ask after your age and health, and what kind of work you can do, and you will tell them that you are at least twenty years older than you really are, and that you are sick half your time, and forty other lies." Thus Mr. Hardin proceeded to relate all the details of Bill's imaginary sale at public auction to the latter's utter discomfiture. Bill would, undoubtedly, have been reduced to the verge of despair, but in proportion as Mr. Hardin added horror to the picture, in that proportion was Bill convinced that his master intended nothing of the kind. In truth, Bill lived and died among Mr. Hardin's descendants, the yoke of bondage resting on him considerable less heavily than the freedom which war and revolution afterward brought him.

On another occasion Mr. Hardin related a dream to his family, to the effect that he thought he had died and been buried; that six months afterward he had returned to Bardstown, gone to the court-house, and found court in session, and a will-case on trial. He soon discovered that the controversy was among his heirs-at-law over his own will, which was being contested because of mental incapacity in the testator. He named the counsel in the case, the members of the jury, and called over the witnesses, reciting the testimony of each, repeating, with great gusto, the statements of certain very ignorant witnesses who pronounced the testator of unsound mind. He omitted none of the details of the supposed trial, but the humor of the recital was rather too grim to be enjoyed by his anxious household.

On still another occasion he assembled his children and grandchildren to listen to his will, which he caused to be read. In appointing his executors, he had not designated his son-in-law, Governor Helm, as one of them, of which the latter complained. From time to time, Governor Helm and Mr. Hardin had had their personal relations more or less disturbed by various occurrences. The latter was autocratic, the former independent. But the profound esteem and attachment each felt for the other soon pacified these transient differences. Possibly, a feeling of pique may have caused the omission in the will, but Governor Helm was chagrined and mortified, rather than offended. He felt that it would be construed as indicating a lack of confidence on Mr. Hardin's part in his integrity, which he knew was not his meaning.

He said nothing to Mr. Hardin himself, but when the matter was mentioned by another, Mr. Hardin said he was entirely willing to appoint Governor Helm one of his executors, but to do so would require a codicil, and he had ridiculed and denounced codicils so often in his speeches, that he could not, for a moment, think of adding one to his own will. He suggested, however, to one of his daughters, who manifested anxiety about it, that if she would re-write his will, she might insert Governor Helm's name as one of the executors. This was accordingly done.*

The long hours of suffering brought to his mind the importance of preparing for death. Always a believer in the Christian religion, and in the plan of salvation revealed in the Bible, yet, he had from time to time postponed accepting its terms. He now resolved to do so no longer. He had not only studied the Bible, but had reflected on its great truths profoundly. He called, as a religious adviser on the occasion, Mr. McAllen, the pastor of the Methodist church in the town. Mr. McAllen was of great piety and zeal, but unwisely undertook to deal with Mr. Hardin as a "babe in Zion."

He not only dwelt on the promises of the Gospel, but gave equal, or greater, prominence to the results that would follow their non-acceptance. After one of his visits, Mr. Hardin remarked: "That man means well, but it seems to me that he would accomplish more if he spent longer time talking of the love of the Saviour and less of hell-fire and the devil."

At length, he professed that saving faith that brings "the peace that passeth understanding." He was received into the membership of the Methodist Episcopal church, South. At his request, a number of his most intimate friends were gathered in his own room, and, with them, he partook of the sacrament of the Lord's Supper.

His frequent and earnest references afterward to his spiritual state, left no doubt of his abiding confidence that the grace and mercy shown to his fathers had been vouchsafed to him. His wife's tireless and hope-inspiring devotion induced him to believe for awhile that he might not only get abroad again, but be restored to health. He so far recovered as to be removed from his bed to an invalid chair, in which he spent a part of each day. He caused a vehicle to be made —so arranged that he could comfortably ride in it and take the air. In anticipation of soon being able to move about unassisted, he provided himself with crutches.

*See Appendix, note F.

But these hopes were of short duration. Fatigue and anxiety, at length overcame the faithful wife. She was seized with a congestive chill, and, while surviving its immediate effects, rapidly declined. On August 4th, she was known to be dying. Mr. Hardin had himself carried to her bedside, and there he remained a dazed and broken-spirited watcher till the end came.

After this event he abandoned all hope of life, and patiently waited for his hour to come. Shortly afterward, he was attacked similarly to his wife, and this, accompanied by his previous injury, and complicated with gastric irritation, rapidly sapped the citadel of life. At this period he was visited by his kinsman, Hon. Martin D. McHenry, who thus refers to it:

"Hearing that he was so seriously afflicted, I went from my home at Shelbyville to see him. I found him rational, composed, self-possessed, and spent the day by his bedside. He talked very freely to me about some business matters which he wished me to understand, and expressed himself satisfied that he should not recover, but that slowly and surely his end drew nigh. He was always an intelligent and firm believer in the scriptures and in the religion of Jesus Christ, and on the occasion of this, my last interview with him, he spoke of the subject seriously, and as such a man would on such an occasion. He told me he had been visited by the pastor of the Methodist church in the town, that he had conversed freely with him on the subject. He had subsequently sent for the same minister and communicated to him his faith and hope, and said he had requested him to enroll his name as having united with the church. In short, though he made no emotional professions, he had repented, believed, and trusted, and now believed he was a subject of divine grace."

The members of his own family, who had died before him, had been buried in the cemetery at Bardstown. His father and mother rested in a burial place on the farm in Washington county, where they had first settled in the wilderness. It was the understanding in the family that Mr. Hardin had promised his mother to be buried by her side. As the end drew nigh he became solicitous for the fulfillment of this promise.

The following incident illustrates his filial devotion as well as frame of mind in his last days:

He called his children and grandchildren around his bed, and his daughter—Mrs. Riley—at his request read from the 47th chapter of Genesis, 29, 30, and 31.

"And the time drew nigh that Israel must die; and he called his son Joseph, and said unto him, if now I have found grace in thy sight put, I pray thee, thy hand under my thigh and deal kindly and truly with me; bury me not, I pray thee, in Egypt; but I will lie with my fathers, and thou shalt carry me out of Egypt and bury me in their burying place. And he said, I will do as thou hast said. And he said, swear unto me. And he sware unto him. And Israel bowed himself upon the bed's head."

After the reading had ended, addressing those around him, in pathetic imitation of the patriarch, he said: "All of you lay your hands upon my thigh, and promise me that you will not bury me here, but will take my remains to Washington county, and there bury me by the side of my parents." Says Mrs. Riley, "We promised."

After this, he patiently waited for that guest whose coming no longer had terror for him. The State, meantime, was agitated by a presidential campaign. Politicians traveled their usual stages, and stirred partisan feeling to its depths. The hosts he had led in political conflict, were marshaled by other leaders, yet, he was not unobservant of current events, nor lacking interest in their result. He was fond of hearing what was taking place and what the outlook portended. His sense of the comical also existed to the last hours of life, as the following incident illustrates:

"A few days before his death," says General Preston, "in company with some friends, I called upon him. I found that he had great anxiety about the state of the Whig party, of which he was a member. He was not a little distrustful of Mr. Fillmore, who was then enjoying the last term vouchsafed to a Whig president. He seemed perfectly tranquil, though in some pain, and insisted on knowing all the political news of the day. Several of his friends present, in sympathy with his condition, were wearing long countenances, when the topic came up of the appointment of Colonel Humphrey Marshall as minister to China. Mr. Hardin, assuming a very grave look, expressed his fears that it was a fatal mistake on the part of Mr. Fillmore. Some one of the company inquired the reason why. Mr. Hardin replied, that many years before he had read the account of the English embassy of Lord Macartney to China, from which court he was sent away because he could not perform the kowtow, or court genuflexion; that it was true that for purposes of commerce, the emperor had allowed various hongs to the barbarian nations, and, among others, one each to England and America, but that the jurisdictional lines of these hongs were of remarkably limited extent; and that by the terms of the compact, if any foreigner wandered beyond his proper hong, he was punished with great

torments, or decapitation. Mr. Hardin continued, that from what he could learn of the size of the United States hong, it was already too narrow for the accommodation of the Yankee merchants congregated there, and that if Colonel Marshall (who was of great corporal ponderosity), went into it, that he could not possibly perform the kowtow (as he was more than three feet in diameter), without causing the Yankee merchants to violate the jurisdictional line, which would lead to their arrest and execution, and this again to a sanguinary war between the United States and the Flowery Kingdom, which might bring the belligerents, before its termination, into hopeless ruin. He could forgive Mr. Fillmore many things, and did forgive him, but could never forgive him if he departed from the wisdom of Washington, and involved us in such an unnecessary struggle when it was so easy for him to find a thinner embassador.

"The seriousness of the dying humorist, during this narration, upset the gravity of his surrounding friends."

Neighborly watchers at his bedside as time went on discussed politics and the common-place events of life in respectful undertone. The weary September days slowly wore away, scattering autumnal tints over field and forest. That persistent insect minstrelsy in the grass and trees on the lawn, that had monotonously broken the silence of the summer nights, floated into the sick room more faintly, as the singers sang their last requiem.

The sounds of life came less distinctly to the ear of the sufferer. His faculties became mercifully benumbed as the hour for their overthrow approached. He talked very little, yet, what he did say was not only rational, but showed that his thoughts were less of this world than of that better one, for which he hoped and waited. A day or so before his death, he called a little grandson to his bedside, and, laying his hand upon his head, said: "Jacob blessed his sons, and why shall I not bless you? I bless you, my son, and may God Almighty bless you."

"One night," says Mrs. Riley, "as he lay so quietly as to render it doubtful whether he was awake or slept, I asked him if he desired anything. 'No,' he replied, 'no—nothing but glory, and I have that.'"

On Friday, September 24, 1852, rational and conscious to the last, surrounded by children, grandchildren, and friends, he peacefully and quietly fell into that sleep that knows no earthly waking. Thus this man of bright humor, this skillful lawyer, powerful orator, and wise statesman, at the end of his long career, met death in the meek and trusting fashion befitting a descendant of the exiled Huguenots.

It is often said of those who die before age or disease have abated the natural powers of body or mind that death is untimely. It could be said of Mr. Hardin, at least, that his mental force had shown no sign of decay or diminution. He fell as falls the strong warrior in the full tide of victorious battle. There was no decrepit interval between the end of his career and the end of his life. Is it not a blessed mercy to go thus suddenly down to death, rather than linger a dotard on the margin of life, and by the infirmities of a common humanity blur the picture of one's strength and genius? "May it please the Giver of all good," said John Quincy Adams, "to guard me from the disgrace of dishonoring my last days by loitering too long upon the stage."* "There is a certain dignity," says Henry Mackenzie, "in retiring from life at a time when the infirmities of age have not sapped our faculties."† It adds a charm to the story of Him who was God manifest in the flesh that, judged by mortal standards, He passed from earth in the full perfection of all intellectual and physical powers, and to the devotee to-day that glorified face looks down with its manly beauty all unchanged after the lapse of eighteen centuries. Reverently, be it said, that it is fortunate for Mr. Hardin's memory that his intellectual manhood never fell into ruin, but while still shining in meridian splendor was suddenly and irrevocably eclipsed by the shadow of death. Thus ending life is, indeed, not dying—it is spiritual translation. The soul is only a tenant changing houses.

"Then steal away, give little warning,
Choose thine own time;
Say not 'good night,' but in some brighter clime,
Bid me 'good morning.'"

* Memoirs, Vol. IX., page 187. † The Man of Feeling, page 184.

CHAPTER XLI.

CONCLUSION.

SOME religionists believe and teach that the good of the soul after death requires that the body rest in consecrated ground. Our English and Scotch ancestors buried their dead in the church-yards of their respective parishes. A similar custom prevailed in some of the American colonies, which has not been interrupted by the great changes on this continent since transpiring. The Protestant, no less than the Catholic, believed—and very largely still believe—that Christian burial can only be found in places expressly consecrated by rites and ceremonies, or hallowed by the dust of kindred and loved ones.

The pioneers of Kentucky, and the South and West—meeting death untimely on the battle-field—from foes in ambuscade or other frontier peril, or in their beds in their rude and scattered homes, "when their appointed time came," were content to be laid anywhere beneath the sod. Public cemeteries were rare, and practically inaccessible. Churches and their appendant burial places were widely scattered; and so, in default of any other, the early settler selected a spot on his own lands, near his dwelling, which was set apart as a "grave-yard." As members of his family died, they were laid there. It was a soothing thought to the parting spirit that the mortal body would lie in close association with those loved in life. It mitigated the silence, desolation, and gloom of the grave, to reflect that near by slept a father, a brother, or a child—and not far away were the sights and sounds of the old home! The silent sunbeam of the morning first kissed those green mounds in its swift flight to the door ajar in "mother's room," and at evening, the gentle zephyr, straying wearily from the west, crept down in the ivy and whispered lullabies to the dead. A recent author, thus refers to this American custom of private burial places: "In the scattered population of Virginia, churchyard burial became impossible. In its place, grew up the habit of interring the dead beside the homestead. This ground, consecrated by the dust of the family, was the last possession parted with; indeed, it almost always remained in the possession of the kindred to

the farthest generation. So it came about that for a decent man to own no acres that might receive his dust was something that appealed strongly to his fellows. It is a social instinct, peculiar to the Southern States of this Union." *

Somewhat uncared for, and sometimes forgotten, are the dwelling places of these silent families whom death has not divided. But they will need neither obelisk nor epitaph to commemorate their names with a worthy posterity.

On the farm, in Washington county, where Mr. Hardin's parents had settled on coming to Kentucky, in 1788, their bodies had long been laid to rest. Others of his family, dying before him, had been interred in the public cemetery at Bardstown, Mrs. Hardin being the last. By the side of his parents, in a spot marked by evergreen trees (and, of late, by some intrusive locusts, in addition), in an old and neglected field, near the public road from Springfield to Lebanon, a few miles from the former, stands a stone, bearing as its sole inscription: "Ben Hardin, of Bardstown." There his dust now reposes. The memorial stones he had erected to his wife and his children, had been marked with their names only. His own monument was so inscribed, in accordance with his known wishes and simple tastes. Nothing could have been more repugnant to him than an ill-devised epitaph, or a pretentious and insincere posthumous eulogy.

"Some years after his death," writes Mrs. Riley, "a committee of gentlemen waited on my husband, to obtain my consent to the removal of his body to the cemetery at Frankfort, where it was proposed to erect a monument to his memory. I related the circumstance of the promise, and this ended the matter." †

In Westminster Abbey, for several centuries past, England has garnered the dust of her great and famous children, until something of the atmosphere of genius and glory hovers about "the solid pillars, the ponderous arches, the huge edifice with triple tower and sculptured stones, and storied windows." ‡ Kentucky has no Westminster Abbey, but, instead, has buried a goodly host of pioneers, soldiers, statesmen, and scholars in her cemetery at Frankfort, the State capital. The cemetery is situated on a slightly undulating plateau, on Kentucky river, where the shore springs abruptly several hundred feet above its limpid waters. If the field of Macpelah, which Abraham bought for a burying-place, was anything like it, the anxiety of Jacob not to be buried in the sands or catacombs of Egypt

* Kentucky—a Pioneer Commonwealth, by Professor N. S. Shaler, page 156. † See Chapter XL.
‡ Dean Stanley.

was, no doubt, heightened by recalling the soul-comforting peace that lingered around the tomb of his fathers. Overlooking the river and the little city below, and in view of picturesque hills beyond (not unlike those bordering the valley of Hebron), yet these sights seem far away, and the blue heaven above, somewhat closer by! From Boone, the pioneer, to Hart, the sculptor, is a long and illustrious roll of Kentuckians that will be called among men until the Anglo-Saxon race and all it has achieved—like prehistoric man—shall be blotted from the chronicles of time.

BOONE'S GRAVE.

APPENDIX.

NOTE A, PAGE 4.

GRANT FROM LORD FAIRFAX TO MARTIN HARDIN IN 1748.*

(NOTE 1.)

The Right Honorable Thomas Lord Fairfax, Baron of Cameron, in that part of Great Britain called Scotland, Proprietor of the Northern Neck of Virginia: To all to whom this present Writing shall came, Lends Greeting. Know Ye that for good Causes for and in Consideration of the Composition to the paid and for the annual Rent hereafter reserved, I have given, granted, and confirmed, And by these presents for me, my Heirs and Assigns, do Give, Grant, and Confirm unto Martin Hardin, of the County of Prince William, a certain Tract of Waste and ungranted Land, lying in the Great Fork of the Rappahannock River, Orange County, and is Bounded according to a Survey thereof made by Mr. George Hume, as followeth: Beginning at a large Hickory and Red Oak Corner in a Line of Colonel Francis Thornton, and runs thence with the said Thornton's Lines So. 27°, Wt. twenty-eight poles, to one red Oak and Hickory, So. 15°, Et. Forty-two Poles, to a Poplar, So. 48°, Et. Sixty-four Poles to a Red Oak, So. 76°, Et. Forty Poles to two Spanish Oaks, So. 32°, Et. Fifty Poles to one Hickory, one white Oak, and a red Oak Corner to the said Thornton's; thence leaving his line So. 8°, Et. Thirty-six Poles to one Hickory and three white Oaks in the line of another Tract of the said Thornton's, thence with the said Thornton's line So. 40°, Wt. Two Hundred Poles to one Hickory and two white Oaks Corner to the said Thornton and William Green, thence with the said Green's Line No. 70°, Wt. Sixty Poles to Two White Oaks and one red Oak Corner to the said Green and John Weatherhall, thence with the said Weatherhall line No. 40°, Wt. Three Hundred Poles to one red Oak, on a Ridge, thence North Sixty-two Poles to a Chestnut, Oak, and Hickory, at the foot of a Mountain; thence over the said Mountain East Two hundred and thirty-four Poles to the Beginning, containing Four hundred acres, Together with all Rights, Members, and Appurtenances thereunto belonging, Royal Mines excepted, and a full third part of all Lead, Copper, Lime, Coals, Iron Mines, and Iron Ore that shall be found thereon: To have and to hold the same Four hundred acres of Land, Together with all Rights, Profits, and Benefits to the same belonging or in anywise appurtaining, Except before Excepted. To Him, the said Martin Hardin, his heirs and assigns for Ever. He, the said Martin Hardin, his heirs and assigns, therefor, Yielding and Paying to Me, my Heirs and Assigns or to my certain attorney or attorneys, agent or agents, or to the certain attorney or attorneys of my Heirs or Assigns, Proprietors of the Northern Neck, Yearly and every Year on the Feast Day of St. Michael, the Archangel, the Fee Rent of One Shilling Sterling Money for every Fifty acres of Land hereby Granted, and So proportionably for a Greater or Lesser Quantity. Provided that if the said Mar-

* Transcribed from the original in possession of Hon. Horatio W. Bruce, of Louisville.

tin Hardin, his Heirs or Assigns, shall not Pay the before reserved annual Rent, So that the same or any Part thereof shall be behind or unpaid by the Space of Two whole Years, after the same shall become Due, if Lawfully Demanded. That then it shall and may be lawful for Me, my Heirs and Assigns, Proprietors as aforesaid, My or their certain attorney or attorneys, agent or agents, into the above Granted Premises to Reenter and Hold the same, so as if this Grant had never Pass'd. Given at my office, in the County of Fairfax, within my said Proprietary, under my Hand and Seal. Dated this twentieth day of June, in the Twenty-second Year of the Reign of our Sovereign Lord George, the second by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, the A. D. one thousand seven hundred and forty-eight.

FAIRFAX.

Registered in the Proprietor's Office, in Book G, Fol. 70.

SOME SCOTCH HARDINS.

(NOTE II.)

The name of Hardin was known in Scotland from an early period. An ancestor of Sir Walter Scott was known in border story as Auld Wat of Hardin. Auld Wat's son William, captured by Sir Gideon Murray of Elibank during a raid of the Scotts on Sir Gideon's lands, was, as tradition says, given his choice between being hanged on Sir Gideon's private gallows, and marrying the ugliest of Sir Gideon's three ugly daughters. Meikle-mouthed Meg, reputed as carrying off the prize of ugliness among the women of four counties. Sir William was a handsome man. He took three days to consider the alternative proposed to him, but chose life with the large-mouthed lady in the end, and found her, according to the tradition, which the poet, her descendant, has transmitted, an excellent wife, with a fine talent for pickling the beef which her husband stole from the herds of his foes. Meikle-mouthed Meg transmitted a distinct trace of her large mouth to all her descendants—Sir Walter, among others, thus betraying his pedigree.*

From this marriage sprang sons, who, by inexplicable coincidence, bore the names of John Hardin, Mark Hardin, and Ben Hardin. The reader will note that these are family names among the Hardins of Virginia and Kentucky.

NOTE B, PAGE 108.

PREAMBLE, WRITTEN BY HON. JOHN ROWAN IN SUPPORT OF THE CONSTITUTIONALITY OF THE RELIEF LAWS.

The late decision of the Court of Appeals, pronounced in the cases of Blair vs. Williams, and Lapsley vs. Brashear, having been referred to in the communication of the governor, demands the attention of the Legislature. In that decision, the existing remedial laws of the State are declared to be unconstitutional and void, in relation to all contracts made anterior to their enaction. The principle which it establishes, whether viewed in relation to its practical effects upon society, in its present embarrassed condition, or in relation to the exercise of legitimate power by the departments,

* Biography of Sir Walter Scott, by Richard H. Hatton.

according to its distribution and apportionment, in the Constitution of the State, is entitled to such calm and vigilant scrutiny of the Legislature, and if, upon that scrutiny, those laws should be found to have been enacted, in contravention of any provision of either the Constitution of the State, or that of the United States, they should be forthwith repealed, and their place supplied by valid enactions. But if, on the contrary, they should be found to be not in confliction with any restraint imposed upon legislative power, by either of the constitutions, and it should appear that the judges, in proclaiming them void, have transcended the limits assigned by the constitution to the exercise of judicial power, they should be informed of that fact, and admonished that their decision does not, as it ought not to, vacate those laws. Their concurrence was not, by the constitution, necessary to their enaction. Their veto can not vacate them; and they themselves have declared, in the case of Banks vs. Oden, that, while they would feel it their duty to pronounce any act of the Legislature void, which was manifestly in confliction with the constitution, they feel a strong disinclination to encroach upon the province of the Legislature, by attempting to narrow its sphere of action, or thwart its will. They can not do it by construction or intendment. The confliction of the law with the constitution must be obvious and palpable to induce them to make such declaration. (See 1 Marshall, 551.) There is, therefore, high authority against the arrival, by construction, at the conclusion that a law is unconstitutional. The impulses of charity and the dictates of reason, alike proclaim that the judges, when they entertain doubts as to the constitutionality of a law, should presume that those who enacted it were not less obliged than themselves to preserve the constitution inviolate, and should give effect to the law. All the judges concur in the opinion that the existing remedial laws are void, in relation to contracts which were in existence at the time of their enaction—one of them declares all laws to be void which authorize replevins, or sales on credit, in any case whatever. Each supports his opinion by his construction of the tenth section of the first article of the Constitution of the United States, which, in the latter clause of it, provides "that no State shall pass any law impairing the obligation of contracts."

It will, perhaps, subserve the purposes of this inquiry into the correctness of the decision, and accord better with correct notions of fitness, that it should be confined mainly to the reasoning of the chief-justice, as he is the official organ of that court. He inquires, first, what it is that constitutes the obligation of a contract? and, second, does the act of assembly impair that obligation? The act alluded to is that which allows a replevin of two years, when the endorsement that notes on the bank of the State, or Commonwealth, will be taken, is not made. In answer to the first question, he asserts, with the writers upon ethics, and the law of nature and nations, that obligations are, according to natural law, perfect or imperfect; and, with them, asserts that the obligation to gratitude and benevolence is of the imperfect sort, and invests the person who claims the performance of its duties, with no right to exact it by force; that the performance of obligations of the perfect sort, may be exacted by violence, on the part of the person to whom the obligation is incurred; that in civil society, the remedies afforded by the laws, are in substitution of the violence, which might, according to natural law, have been used for the enforcement of obligations of the perfect sort; and that, therefore, the obligation of a contract consists, alone, in the remedy afforded by the laws for its enforcement; or, in his own language, "the legal obligation of the contract, evidently consists in the remedy alone. It can consist in nothing else, for if the remedy is withheld or taken away, the contract has no legal obligation."

He illustrates his position by the effect which the statute of frauds and perjuries and the statute of limitations have upon the cases of contract, to which they apply; and

asserts that the statutory denial of remedy to those cases, leaves them without any legal obligation. He instances, also, the case of simple contract without consideration, upon which, at common law, no action will lie. In further illustration of his doctrine, he refers, also, to Evan's Pothier, part 2, chapter 1, as authority in its support.

The doctrine and the cases cited, and referred to for its illustration and support remain to be examined. The doctrine of the chief-justice, in relation to perfect obligations, and the right of enforcing them by violence, in a state of nature, according to natural law, is admitted to be correct, as is also his doctrine in relation to imperfect obligations. But it is insisted that in the transition from a state of nature to the state of civil society, the obligatory force of moral obligations of the perfect sort is not canceled or annulled—on the contrary, the laws of nature, so far as they relate to moral obligations of that character, are incorporated in the municipal code by the social compact, ratified and enforced by the laws of society, as the best rules of action in social intercourse. Indeed, they could not be annulled by society. They were enacted by the great Law-giver of the universe, not for the temporary use of man while in a state of nature, but for the regulation of his conduct, in every state of association of which he is capable. They form a part of his moral sense, are identified with it, and have the sanction of that reason with which he was endowed by his beneficent Creator, as the rule of his conduct and his guide to happiness. His social propensities unite with his reason, in proclaiming the obligatory force of the laws of nature, of the obligations which they impose, and their irrevocable character. The laws of civil society, so far as they constitute the rules of right, are no other than laws of nature more explicitly defined, and suited, in their re-enaction, to the condition of the people who compose the society. Human laws, says Blackstone, are declaratory of the laws of nature.

Law, whether natural or municipal, is a rule of action, and its very existence implies the obligation, on the part of those on whom it is imposed as a rule, to conform to it. The obligation, which is denominated legal, results from and is imposed by the laws of civil society. But the laws of civil society are but declaratory of the laws of nature; therefore, the obligation which results from the laws of nature, results also from the laws of civil society. When considered as resulting from the former, it is binding only in conscience, and is denominated a moral obligation; but when considered as resulting from the latter, it is denominated a legal obligation, and is externally binding.

The purpose for which civil society is formed is the general security and the general interest of the whole and its several parts. Every man, therefore, by consenting to make himself a member of civil society, agrees, tacitly or expressly, that these purposes shall be carried on, and that he will concur in carrying them on, by such measures as the common sense and understanding of society shall approve of and prescribe. Thus far, he is engaged only in a compact, which obliges him, by means of his own immediate consent, without which he would be no party to it, nor be in any way concerned in its obligation. By this compact he gives society a legislative power over him, that is, he gives it a right to prescribe such rules for his conduct as the common understanding of society shall judge to be necessary, or conducive, to the general good. And, consequently, by the same compact, he obliges himself to observe these rules when they are so prescribed. Those rules of right, and of conduct, comprising the laws of nature, sanctioned by the compact, and proclaimed either by the re-enaction of them by society, or by their adoption by immemorial usage, become in society the rules of external obligation as to all the individual and social duties of man in a state of civil society, and are obligatory upon all its members.

The right which individuals possessed in a state of nature, to enforce the performance of obligations of a perfect sort, having, by their entering into the social compact,

been surrendered to civil society, constitutes its executive power, and is, unless otherwise disposed of by fundamental law, regulated by legislative prescriptions. It may be denominated the force of civil society, and is mediately or immediately under the direction of its understanding. The discretion which in a state of nature was associated with the power exercised by individuals in the enforcement of perfect obligations, having been surrendered by the compact, with that power, to civil society, constitutes the general understanding of the society, and is denominated its legislative power; and, as in a state of nature, it presided over and directed the exertion of individual power, so in civil society it presides over and regulates executive power. The sovereign power of civil society is, by many jurists, divided into legislative and executive. The power which others denominate judicial, is by them assigned to the executive department. The civil power of the State of Kentucky has, by its charter, been assigned to three distinct bodies of magistracy: the legislative to one, the judicial to another, and the executive to a third. Neither is to exercise the power properly belonging to the other. The legislative in Kentucky, as in all civil societies where it exists, is the ascendant power. It is limited only by the restraints upon its exercise, which are to be found in the Constitution. By that instrument, it is constituted a check upon the other departments—they are amenable to the Legislature, and the members of the Legislature are amenable to the people, the legitimate source of sovereign power; hence, the right of the Legislature to inquire into the decision which purports to vacate legislative enactments, and to secure the legislative province from invasion from that quarter.

If the sentiment be correct, that the laws of nature are not repealed or vacated by the social compact, but recognized and more explicitly defined and promulgated in a state of civil society than they were in a state of nature; and if it be true, that law imposes on those to whom it is prescribed the obligation of conforming to it, then it would seem to follow that the obligation of a contract between two persons in a state of nature, is deducible rather from that law of nature which proclaims to man the necessity of complying with his just contracts, than from the right, which by the same law of nature, the other party to the contract has to exact by force a compliance with it. The obligatory force of the law upon the contracting parties, results from their freedom of agency—from their having, as free agents, deliberately assented to the contract—and from the necessary influence of volition upon the destiny of free agents. Besides, that man should be bound by the contract to which he has freely assented, is, even in a state of nature, necessary to the enjoyment of that social intercourse for which he was evidently formed, and of that happiness for which his organic conformation and intellectual endowments so eminently qualify him. His perfect obligation, therefore, to comply with such a contract may surely be more fairly inferred from these considerations than from the consideration that a compliance with it might be exacted by the use of violence. Again, the right to use violence for its enforcement is obviously correlative to the obligation and presupposes its existence, for if there did not exist a perfect obligation, there could exist no right to exert violence (as in the case of the imperfect obligations of benevolence and gratitude). There would be nothing on which to predicate the right to use it. Thence, it would seem obvious that the right to use violence to enforce a perfect obligation, did not, even in a state of nature, constitute that obligation, but resulted from it in its pre-existing state.

Let a case illustrate the doctrine. B, a hunter, is about to commence an expedition in pursuit of game. C, a trapper, has furs on hand which he is willing to exchange for skins. B needs the furs; they are necessary to his comfort during the expedition which he contemplates, but he is not in possession of the skins required by C in exchange for

them. C lets him have the furs upon a contract that they are to be paid for in skins when he returns from the contemplated expedition, in which he expects to take them. B returns from his hunting expedition, has been unfortunate, and is unable to pay the skins—the time for their payment has expired. The obligation to pay them is of the perfect sort. C has a right to exact reparation by violence. Does the right of C to use this violence constitute the obligation of B's contract? Or, does it result from the violation of the obligation of his contract? Most evidently from the latter.

Again, although C has a right to exact reparation by violence, is he bound to do it instantly? May he not, if he please, indulge B until he makes another hunting expedition, and, if he should not be successful in that, another and another, until the skins can be obtained? And can his doing so be forbidden, either by reason or the charities of the human heart—would it not, on the contrary, have the sanction of both? Let it be supposed that a contract analogous to the one just stated, has been entered into between two members of civil society. The obligation of the contract would not be less valid in the civil than in the *natural* state. But the right which the obligee had by the law of nature to exact performance, or reparation for non-performance, by violent means, or to extend indulgence at his discretion, belongs by the social compact to the civil society, of which he and the obligor are members. The understanding and the force of civil society, which constitutes its legislative, judicial, and executive power, is composed solely of this right of indulging, or of exacting by instant force the performance of the perfect duties which existed among men in a state of nature, but which they surrendered when they became members of civil society.

In the case put between B and C, it can not be asserted that it was incompetent for the latter to indulge the former. It must be admitted that it was even reasonable and prudent in him to do so—and if it was not only competent, but reasonable and discreet in him to forbear force and extend indulgence, can it be contended that civil society, whose legislative and executive remedial power consists of the very faculties which were competently, and, with approbation, exercised in the former case, can not exercise it in the latter.

Let it not be forgotten that the violence which the obligee may, by the law of nature, exert to enforce a contract, is discretionary with him. He may exact it at any time, or in any manner (not forbidden by the same law), his judgment and discretion may dictate, upon a deliberate view of the condition of his debtor, of the efforts he has used, and the means he possesses of making payment. And is the understanding of civil society less to be confided in, as regards the exertion of its force in obtaining the performance of contracts, or reparation for their infraction, than that of individuals in a state of nature? If so, civil society should dissolve itself, and revert to a state of nature. The social compact implies an obligation on the part of the sovereign to provide for the administration of justice by remedial enactions. But as all and each of the members of civil society are equally interested in its well-being and prosperity, each stands obliged to claim only that justice in his case which may be afforded by the sovereign, compatibly with the justice, which is due to each and all the other members of the community. Justice, therefore, is not, and can not justly be administered in any particular case without due regard to the condition of society, and the infinitely ramified relations inseparately connected with it, and the just claims which result from those relations. Civil society, however numerous its members may be, must, in the administration of justice, or, which is the same thing, in the enaction of remedial laws, be considered a homogeneous mass, and nothing can be justly done in relation to any part which inflicts injustice upon the whole. That contracts should be made, and credit extended, is according to the law of nature. The only dowry with which

heaven ushers mortals into existence, is their intellectual and muscular powers. These are bestowed in association with the mandate that they are to be exerted in accordance with the laws of nature, or the laws of society, which are the same, in achievements necessary to human comfort, and conducive to social happiness. Each individual, to obtain subsistence, must anticipate his energies. He has no property; he has only the power of acquiring it by the sweat of his face, a denunciation not less plainly written in the volume of nature than in the volume of revelation. He needs clothing and victuals; he must obtain them upon credit or perish, but it would have been idle to have created him just that he might perish in the dawn of existence. Such a motive can not, without sacrilege, be ascribed to the Great Supreme. Credit is, therefore, sanctioned by the laws of nature, and, of course, by the laws of civil society. But credit is, moreover, essential to enterprise, and enterprise is essential to prosperity, individual and social.

Now to prove that the Legislature in its remedial enactions, should regard the relation sustained by the individual litigants to the other members of society, and the interests, prosperity, and happiness of the whole in connection with both, the following case is put: B, an enterprising citizen, has, by his industry and skill, acquired property of the value of $5,000; in the view still to increase his fortune and improve his condition, he obtains credit with C, D, E, F, and G, and becomes indebted to each $500; he is about to engage in a laudable enterprise, which promises flattering results, with which he makes them respectively acquainted; he hazards in the enterprise but half his fortune, reserving the other half as a reasonable competence for the sustenance of his wife and children, in the event that his enterprise fails; a sudden change takes place in the condition of society, or his vessel sinks in the storm, whereby the $2,500 and his anticipated profits upon it are lost; a sudden diminution or influx of the circulating medium takes place. He is unable to pay his five creditors, the time for payment has elapsed; C, the first of them, is about to commence suit for his $500. But the remaining half of his fortune will not, at an instant forced sale, pay more than the amount of C's debt—such is the changed condition of society and of things. But if time were afforded him, he could, by his industry, enterprise, and skill, be enabled to pay each of the five the amount due him, and have a little residuum for the support of his wife and children. His case is but a sample of the general condition of society. The change of things has effected all, or, at least, a great majority of the community, in something like the same way. What should be done? Ought not civil society so to change the remedial system as to suit it to the changed condition of society? or ought the existing system, which had in its enaction been suited to the most happy and prosperous state of things, to be retained, as the instrument of ruin and oppression—as the instrument, in the case put, of fraud upon the remaining four creditors of B, and of his entire ruin? Would the four creditors, in a state of nature, have permitted C to swallow up the total of B's property, in the payment of his debt, and leave them unpaid, and without the hope of ever being paid—ought they to have done it? They would not, they ought not. They would have constrained C to unite with them in indulging B to an extent that would have saved all their debts, and left him under the cheering influence of hope; and what they would not, and ought not to do, ought civil society to do?

Montesquieu lays it down as political orthodoxy, "that laws should be relative to the nature and principle of the government—that they should be relative to the climate of each country, to the quality of its soil, to its situation and extent, to the manner of living of the inhabitants; they should have a relation to the degree of liberty which the Constitution will bear—to their inclinations, riches, numbers, commerce, manners, and customs," etc. The foregoing are laid down as the great principles of judicious legis-

lation; they are illustrated and established throughout his "Spirit of Laws," a work which, by rescuing the science of government from the obscurity in which ignorance and superstition had involved it, conferred immortality upon its author. The principle of a republic is virtue, of a monarchy is honor, and of despotism is fear. Strange, that in a republic the appellate court should have selected fear, the principle of despotism, as the motive to duty. But if the new doctrine be correct, the legislative power can not be exerted in the enaction of laws, relatively or suitable to the condition of society; civil society must enjoy an exemption from the vicissitudes to which the destinies have subjected the affairs of individuals, and of empires, or, it must submit to the unmitigated rigor of those vicissitudes. Its condition in peace and war, in plenty and scarcity, health and disease, must remain the same. If the plague, the leprosy, or the small-pox were to visit society, no law could be passed providing for the segregation of the unhappy sufferers—it would be in violation, it may be supposed, of the obligation of the social compact. It would, at least, be an alteration of the existing laws in relation to social intercourse—the remedial system must remain the same, or it must, in the progress of its duration, be involved in inextricable perplexity, for it can only be altered prospectively.

But such has not been the understanding or practice of men, either in a state of nature or of civil society. The polished member of civilized and refined society is, and must, according to human destiny, be alike ignorant of future events, with the rude, untutored child of nature. The latter takes shelter in the nearest cave from the impending storm; nor is he at all conscious that his obligation to escape the storm consisted in the shelter afforded by the cave from its ravages. But he is very conscious that if he were to intermit his pursuits and remain in the cave during the calm which succeeds the storm, in the view to be availed of the same remedy against the like evil, that he would have to expiate his folly in doing so, by his wants and his sufferings. Nor will he have lived long before he will have learned that, although the seasons and their order of succession are fixed by fundamental law, yet that the weather in each is changeable and capricious; and that though he may predicate the plans of his life upon the fixed and stable succession of the seasons, yet his labor must be often intermitted and his plans thwarted by the irregular changes of the weather in each season, which, not being able to foresee, he could not guard against. He will learn from the volume of nature what the Christian learns from that of inspiration—that the wind bloweth where it listeth, and that whence it cometh, or whither it goeth, no man knows. He will learn, also, that clouds and storms of a desolating character, are often associated with its current; and he will find that the happiness at which he aims, will be promoted not less by its exertions to mitigate the effects of adverse and unforeseen occurrences than by any efforts he could use of a preventive or cautionary sort; all this will be learned alike by the member of civil society as by the child of nature—experience will have taught both; and the member of society will get to know that the adverse occurrences to which he is liable in the civil state, are not better guarded against by the fundamental law of the civil constitution, than are the irregularities and caprices of the weather, by the stability of the seasons; and that refuge is to be found alone in the wise exercise of that remedial power, accorded in the Constitution to the Legislature.

What is human life but an irregular series of remedial efforts enjoined upon mortals, by the resistless propensity of their nature, to ameliorate their condition, and does not reason sanction these efforts?

But why, it may be asked, were not the States, upon the formation of the Constitution of the United States, melted down, and their existence abolished, if the doctrine be correct that they can not suit their remedial system by varying it to the varied

conditions of society? If one unaltered, and unalterable, system of laws was destined to regulate in perpetuity the concerns of the people of the republics of America—if the people of the State of Maine and of Georgia, and all the intermediate States, however different in manners, customs, pursuits, and inclinations, inhabiting different soils, and influenced by different climates, could flourish and prosper under the same unvaried remedial system, why the afflicting expense of sustaining twenty-four different States, with the legislative, judicial, and executive machinery of sovereignty? Why, under this hypothesis, are they taunted with the mock lineaments, contexture, and aspect of sovereigns, when, in very deed, they are dwarf vassals? Are the principles laid down by Montesquieu vapid and illusory, and were the patriots, who achieved the independence of the American States, and formed their respective constitutions and that of the United States, deluded into the erroneous belief that those principles were correct, and had been verified by the experience of past ages? Were they mistaken when they believed that heaven had not assigned geographical limits to the potential extent of republican government? That all attempts, therefore, at its extension have been abortive only because, in its spread, it has not carried with its expansion the power and machinery of local legislation? And were the State constitutions formed, and the power of local legislation reserved in them, to the respective States, in the same mistaken views? And was it reserved for the judges to protect and proclaim the error? To ascertain that the great rules of right consist alone in the remedy, that the only obligation of a contract consists alone in the power to enforce it, which existed at the time it was made? To proclaim and enforce a doctrine which unnerves the legislative arm, paralyzes its power, and throws it into a state of helpless inaction—of chemical fixation? It is not unfair when a doctrine so novel, and so extensively operative, is about to be propagated, to dwell a little upon its probable political effects.

The governments of the United States and of the States are, it must be acknowledged, dependent for their existence and duration upon the will of the good people who compose them—this dependence is settled by fundamental law. In each Constitution the people have reserved to themselves, as an indefeasible right, the power to alter, amend, and abolish the form of government thereby established. The will of men is very much influenced by their feelings and their affections—their affections and their feelings have much to do in the formation of their opinions. The strength of these governments happily depends, not upon any system of physical force, contrived for their invigoration, but depends upon, and consists in, the affections and will of the people who compose them—the right of suffrage throughout the States, with but few exceptions, is, as it ought to be, unqualified; consists alone in the unhampered exercise of matured discretion. Can it, therefore, accord with correct political principles to diminish, or to alienate, the affections of the people from their government, by demanding of them "brick and denying them straw?" Are not the affections of the people the anchorage of the government? Let it not be forgotten that the affections of a people will always be found flowing in the channels of their interest.

Let this argument be illustrated by example. The staple of the State of Louisiana is sugar; that of the State of Mississippi, cotton; that of Ohio, flour, and of Virginia, tobacco. It has been already stated that credit is necessary to individual and social prosperity—that man, to advance and prosper, must anticipate his energies, which can only be done by the exercise of that confidence which is essential to social intercourse. The sugar-planters in Louisiana, the cotton-growers in Mississippi, the farmers of Ohio, and the planters in Virginia may, in every year, anticipate their crops respectively—anticipation to that extent is not only allowable, but justifiable. Each confides in the

heavens, its dews, its rains, and its sunshine—its general course has been kindly, and invited confidence to that extent. But, unexpectedly, a frost nips the cane—defeats the hopes and blasts the crop of the sugar-planters, who compose the mass of the staple population of that State. The weevil, the fly, or the rust invades and desolates the wheat crops in the State of Ohio. The rot or the frost visits and destroys the cotton crops in the State of Mississippi. The worm besieges and destroys the growing tobacco in Virginia, and the army worm marches across the plains of Kentucky, and desolates its fields and its meadows. The existing remedial systems in their several States were enacted in auspicious times, and suited to their prosperous condition—to the habitual kindness of the heavens.

What is to be done? Shall a single unseasonable frost in Louisiana subject the sugar plantations of that State to instant sale under the hammer and their proprietors to ruin? Is there no remedial power in that State which can be exerted by its Legislature, to avert so great a calamity? Is the sovereign remedial power of Virginia to be vanquished by the tobacco worm? Can the army worm conquer the State of Kentucky, and *disarm* it of its remedial energies; and must the legislative remedial power of the great State of Ohio, yield to the force of the feeblest and most contemptible insect tribes? The effects of a late frost, or of a long, protracted rain upon the cotton of Mississippi, must remain alike remediless. And must the good people of these States be told that there exists no power in their governments to soften the rigor of these visitations—visitations which, if they can not be softened by remedial enactions, must eventuate in the ruin of the great body of the staple population of these States, and in the alienation of their affections from that government by the sternness of whose indifference to their calamities, they will suppose themselves to have been destroyed? They will have been made from good citizens, in whose affections the government had its best anchorage—an anchorage guaranteed by all domicilary sanctities, enemies to their government—adventurers ready to flock to the standard of experiment or revolt. They may gain, they can not lose. They have lost their homes, their firesides, and their altars, with which their patriotism was identified. They had a government—they had a country—they have now neither—they have both to seek. The force with which David subverted the empire of Saul was of that description. "And David, therefore, departed thence, and escaped to the cave Adullam, and every one that was in distress and every one that was in debt and every one that was discontented, gathered themselves unto him, and he became a captain over them," etc. (1 Samuel, chapter xxii, verses 1, 2.) The dangerous impolicy of the doctrine, ought not, it is believed, to have been without its weight with the judges, when they were advancing by construction to its establishment.

The power of enacting remedial laws is not, indeed, denied in terms to the Legislature; they are permitted, say two of the judges, to enact them prospectively; but in the case just put, and, indeed, in all the cases, in which, to avoid public calamity, the exercise of the remedial power would be necessary, or could be useful, it must not be exerted in mitigation of the influence of unforeseen and unexpected events upon existing contracts. The power accorded by a majority of the judges to the State never could be wisely exercised in relation to those upon whose contracts it would operate; they would have been made with such a knowledge of the existing pressure as would not entitle those bound by them to exemption from it. To say to a great portion of a community who had become indebted by a reasonable anticipation of their resources, and were about to be ruined by an unexpected revolution in the state of affairs, that the rigor of their condition could not be alleviated; that the sovereign power of the State could not be exerted to soften it; that their calamities, although unexpected, and

of a character that prudence could not have averted, must be borne, if it should even grind them to dust. That the remedial power of the State could only be exerted prospectively; exerted so as not to benefit or to save them, but to benefit and save their creditors, and speculators, who might grow rich by their irremediable ruin. For a State thus to speak to her afflicted citizens, would be ungracious, at least, as it related to them, and somewhat humiliating as it related to herself. The power accorded by the judges to the Legislature, is the power of enacting a remedial system in times of great public calamity, not for the purpose, or in the view, of saving the citizens of the State from ruin by its pressure, but for the purpose of being used when calamity, its causes and effects, shall have passed away—that is when it would be inappropriate and would not be needed. It is not, therefore, unworthy of remark that the permission conceded by the two judges to the Legislature to enact remedial laws prospectively, is, in effect, in consonance with the opinion of the third judge, which denies to this department the power to enact remedial laws. For having denied the exercise of it to the States, in the only cases, and under the only circumstances, in which there could exist a motive to exercise it; their permission of the power, where it would be inexpedient, and even silly, to exercise it, can be neither more nor less than a disguised denial of it. It is, to say the best of it, giving to the people a stone when they ask for bread.

But there are other aspects of the opinion, believed to be irreconcilable with principles of political orthodoxy. It is of the essence of sovereign power, that there shall exist no restraints upon its exercise other than those imposed by the laws of its existence. That it shall know no restraint upon its exercise which is not found in fundamental law or in its own discretion. When, therefore, it is restrained from action, or restricted in its agency, by any other cause or power, it ceases to be sovereign, and acknowledges the power by which it is restrained to be paramount. The restraining power must, in the nature of things (so far, at least, as relates to itself and the power restrained), be sovereign; and the power restrained must, on the same principle, be vassal. According to the opinion of the court, any two citizens of the State may, by contract, oblige the State to retain the remedial system existing at the time of its date, until it shall please the one, or the other, to resort to the forum for its enforcement, or for reparation for its infraction, though the contract be executory, and not to be performed for twenty, or even thirty, years thereafter. If the State shall, in its advancement in science and refinement, have found it necessary to repeal the system, the repeal is to go for nothing, as it relates to creditors by contract, anterior to its repeal. They will have the right to exact from the State a recovery of their claims, according to the long-since exploded and, perhaps, forgotten system. It is not less a rule of law, than of good sense that a law by its repeal goes into non-existence, and can not be afterward efficient; that all proceedings depending upon a law, at the time of its repeal, fall with it, unless there be a saving in the repealing statute in their favor. But this rule is reversed by the decision, and a repealed statute is either not repealed, or it is re-enacted by the court. Either the State has not the power to repeal it, in relation to creditors of that description, or the court has the power to re-enact it in their favor. But not only have any two citizens of the State this control over the sovereign power which it possesses, but any two, of any State, nation, or kingdom have like power, so that the sovereign legislative power of the State may be exerted in the alteration of amendment of its laws, subject to the supervision and control of creditors, alien or domestic, civilized or savage. This limitation upon the exercise of legislative power can not be viewed in any other light than as a courteous denial of it, for when it is considered that the relation of debtor and creditor is one of continuous and unceasing recurrence throughout the societies of the civilized world, that the same person is almost always

debtor as well as creditor, that the same persons are debtors as well as creditors, under contracts of different dates, and of all possible modifications. The relation of debtor and creditor will present itself to the view of intelligence as a fiducial stream which, like the natural, consists of confluent globules, incapable of separation for any useful or practical purpose, within the scope of legislative power, for society never can be divided into two classes, the one debtor and the other creditor. The waters of the ocean might as well be divided, the salt from the fresh.

Each of the judges condescends to notice, in the division of the subject, the constitution of the State. But each seems to have extracted enough, by the process of construction, from the tenth section of the first article of the Constitution of the United States, to vacate the State laws, and to invalidate the power employed in their enaction. The third judge does, indeed, invoke to the aid of his construction of that section the ephemeral effusions of the revolutionary period of the American history, not excepting even the querulous ebullitions of foreign ministers. But neither condescend to show by reference to, or comment on, the provisions of the State constitution, that his construction of the former is in harmony with, or is supported by, the latter. The thirteenth section of the tenth article of the Constitution of the State of Kentucky is the part of that instrument to which they are presumed to have alluded. It is in the following words: "That courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay," which should be considered in connection with the fourteenth section, which immediately follows it, and is in these words: "That no power of suspending laws shall be exercised, except by the Legislature, or its authority." These two clauses are evidently and emphatically addressed to the judiciary. By the first, the duty of administering justice by the due course of law, without sale, denial, or delay, is enjoined upon the judges; they are not to make laws, or repeal laws, but are to administer justice, according to the laws, by due course of law. The laws enacted by the Legislature are to form the rule of decision. They can not repeal or suspend them. They must conform to them in all their adjudications, unless, indeed, laws are obviously and palpably unconstitutional. But the judges have, in this case, not only repealed the laws of their State, but they have repealed the fourteenth article, last above quoted, of the Constitution of their State. They have, moreover, re-enacted laws which have been repealed; and two of them have invested themselves with this power, by elaborate and lengthy disquisitions of an abstract and metaphysical character. The third is as blunt as he is bold in the vacation of the laws of his State. But ought they not, it may be asked, to have displayed in the process of their construction, some regard to the opinions of the sages and patriots who have spoken and acted on this subject? Was the judgment of the convention who formed the State Constitution, and of the Congress who explored it and admitted Kentucky into the Union as an independent State, upon the conviction that her Constitution was not incompatible with that of the United States; strengthened, too, by the approving intellection of the State, under the most solemn sanctions, in its practical exposition during a period of twenty-four years, unworthy of their regard? Should these considerations have been lightly considered? Should they have weighed nothing with the judges, especially when they were traveling the devious path of dubious construction—a path for which they had left the well-beaten and long-trodden highway?

In the formation of the State Constitution, the best, the most experienced intellect of Kentucky was employed. The members of the convention had before them the Constitution of the United States. They were invoked by their own interests, their

own rights, by the interests, prosperity, and rights of their offsprings, and of posterity, by all the solemn considerations which are associated in the human mind, with the blessings of civil liberty, and a Republican, the best form of civil government, to explore well the ground which they occupied; and so to define and establish the rights of Kentucky that they might co-exist harmoniously with the pre-established rights of the United States. And it can be supposed that the discovery now made by the three judges escaped, not only their research, but the research and observation of the Congress of the United States, by whose solemn act the Constitution of Kentucky was approved, and she thereon admitted into the Union. How did it happen that this discovery was not made by these judges, or their predecessors, during the last twenty-four years? How happened it that the enlightened State of Virginia has been violating the obligation of contracts since the year 1748, and that none of her judges and statesmen had the acumen to discover it? How did it happen that all the States committed the like violation of the obligation of contracts, during the pressure occasioned by the embargo, and that occasioned afterward by the war, in their remedial actions, and that there was not discernment enough among the American people to make the discovery, and proclaim the wrong? Were the discoveries of their wisdom stifled by the impulses of their patriotism during those trying junctures; and was it, therefore, reserved to the Appellate Court of Kentucky to promulgate the discovery at this time, when the practical utility and intrinsic strength of the principle might be displayed in the instant prostration of a remedial system, which the Legislature of the State, under the illusion that it possessed the power, had, by a series of successive annual enactions, accommodated to the condition of embarrassment into which the people had been unexpectedly thrown, by causes not within their control?

It is true, the United States Bank did not exist, during all the time referred to, in that almost boundless amplitude of dimension, in which it has seemed latterly to have been arrayed on the part, and under the fostering care, of the national courts, against the States. That is a monied institution, and (as money is power), of course, an institution of power commensurate with its capital. Its motto is, "Pay me that thou owest me." A rigid punctuality (but ill according with the agricultural habits and varying condition and resources of most of the States) is exacted by that institution. From it, therefore, such an exposition of the tenth section of the first article of the Constitution, as would by paralyzing the sovereign power of the States, remove all impediments to its operation according to the laws of its nature and contexture, might have been expected. It is formed to prosper only by the metallic punctuality, which it enforces with remorseless rigor. Its doctrines and faculties are favorable only to commerce, and to commercial societies. It is not intended to be intimated that the decision was formed under any conscious influence from that quarter. Impurity of motive is not ascribed to the judges; but as the consequences of an erroneous opinion may be as injurious to society as a corrupt one, society is under no more obligation to submit to a palpably erroneous opinion, if it be extensively and radically injurious, than to an obviously corrupt one; although, it may be believed that the judges who delivered the former, are, as in this case, incapable of the latter. When error, associated with purity of motive, emanates from the judicial department, the question should be, can it be tolerated compatibly with the great and substantial rights and interests of the community? If it can, it should be connived at; if it can not, it should be combated and refuted. At least, it should be denied the power of propagating itself. The decision, to say the least of it, is believed to be of that character. The supposition that the remedy alone constitutes the obligation of a contract, is predicated upon an entire want of confidence among men—upon the extinction in the human heart, not only of all

its honorable and honest sensations, its love of justice, and its charitable impulses, but its social tendencies—a predication at war with the first principles of civil government.

Confidence is the principle of cohesion in society; its function in the moral region is analogous to that of gravitation in the natural—it is the offspring of the social, selfish, and religious tendencies and bias of human nature. The decision takes it for granted that, in all contracts, the parties, instead of confiding in the honesty, capacity, and punctuality of each other, confide alone in the power of the government as displayed in the existing remedial laws, to coerce performance. That is, that every contract is made, not only with the knowledge on the part of the creditor that it will be violated, but with the intention on the part of the debtor to violate it. And, of course, that the creditor contracts for the purchase of a lawsuit, in which he holds the State bound to let him have the very identical law for which he contracted—the law which he purchased from his debtor—and for the payment of which in kind the State was bound as his security. The tendency of such a doctrine to demoralize the people—its anti-social and degrading tendency—must be too obvious to require illustration. The old maxim, "that the law abhors a multiplicity of suits," is reversed by this decision, and the rules and the legal machinery of litigation are made negotiable, and proclaimed as the obligation of contracts.

There is a striking peculiarity of doctrine proclaimed by the decision, which has not yet been noticed, and that is, that the existing shape of the remedy at the date of the contract is binding upon the debtor, and upon the State, but not upon the creditor. He may, at his option, vacate or affirm the law altering the remedy which constituted according to the decision, the obligation of his contract, on the ground that it is unconstitutional and void. Yet, the law which is thus void, absolutely so, shall be valid if he shall so choose, and, though absolutely void, shall bind the debtor and his security in a replevin bond, taken under it, until the creditor shall deign to indicate his will to the contrary. If a contract shall be made when the law allows a replevy of three months, a law repealing that, and allowing a replevy of twelve months, is unconstitutional and void, if the creditor shall so choose, and his debtor must be subjected to instant execution. He can not replevy for three months, because the law allowing that length of replevy has been repealed. He can not replevy for twelve months, because the time fixed in the remedy, which existed at the date of the contract, was three months. Its repeal was not unconstitutional and void, as relates to the debtor, because, says the court, gravely, its repeal is beneficial to the creditor. If the law allowing a twelve months' replevy be repealed, the debtor, upon a contract made during its existence, can not be availed of its provisions, because, says the court again, gravely, its repeal is beneficial to the creditor.

The old doctrine of the law, of reason, and of philosophy, that it is of the essence of a contract, that it be mutual and reciprocal in its obligation, that it be binding upon both, or upon neither, is reversed and vacated by the decision, which seems throughout only to require that the debtor shall be bound to the creditor.

But if time be an item of any importance in a contract, and the remedial system under which it is made forms the total of its obligation, then an abridgement, or abolition, by the Legislature of the length of replevy to which the debtor was entitled by law at the date of the contract, must, according to any fair reasoning, be as unconstitutional and injurious to the debtor as its enlargement, or prolongation, would be to the creditor. The alteration of the time either way must be valid or void as to both or neither. If the creditor contracted in the view not of being paid by the time stipulated in the contract, but the time stipulated, or rather designated, in the remedial law, then the debt is evidently not due until the expiration of the time designated in that law.

But this new doctrine is either not well understood by the court, or they have been unfortunate in their development of it. While they say that the existing remedial system forms alone the obligation of contracts, they say that the law of establishing the courts, and arranging their sessions, is no part of the remedial system, and, therefore, they permit the Legislature to alter the judicial system at pleasure; to increase or diminish the number of terms or sessions in the year; to reduce them to one in the year, or one in two years, without impinging upon the Constitution of the United States. And why is not this law arranging the courts a part of the remedial system? Let the chief-justice answer: "Because the obligation of a contract consists in the remedy, and not in the court which administers the remedy; and that, though the courts may be altered, or the times and places of holding them changed, the remedy will be the same. It is true that the remedy will be thereby affected, but that can only result as an indirect or collateral consequence." One would suppose that the parties when forming a contract would not, at the time they were contemplating the remedial system as the obligation of it, be so entirely abstract as to overlook the judges and their agency in the enforcement of it. They would be apt to consider them as the chief actors in the remedial drama. To consider the remedy as the obligation of a contract, without considering the forum, or the judicial system, according to which it is to be administered, is marvelously abstract. It is to suppose that a violent fever may be reduced by the contemplation of the lancet, without its actual use in venesection. That the remedy for the disease consists in the theory of the healing art, and that the presence and agency of the doctor in the actual administration of medicine, constitutes no part of the remedy—that it is alike indifferent to the sick man whether he shall be visited once or three times a month by the physician. His visits and agencies are but indirectly and collaterally connected with his cure, or, rather, with the remedy which is to produce his cure. The doctrine, that the judicial is no part of the remedial system, is one upon which courts may be dispensed with altogether, for if their presence and agency is no part of the remedy, and the remedy constitutes alone the obligation of the contract, then their presence may be dispensed with without impairing that obligation.

The judges were driven to the necessity of asserting that the judicial was no part of the remedial system—for if they had admitted that the judicial formed a part of the remedial system, then, according to their own theory, if the Legislature should ordain that there should hereafter be but one, in place of three, terms of the court in each year, it would be competent for the creditors in all existing contracts, to order the courts to sit three times in each year, and we should have four in place of one term in every year—three ordained by the creditors and one by the Legislature. The judges would then, also, alike with the Legislature, be under the control of creditors. But this is not the sense in which the great body of the community has viewed this matter—they consider the remedial machinery and agency of the government as the life and soul of the remedial system; they believe that the essence of the remedy consists mainly in its practical application; and that it might as well not exist, as exist and not be administered.

The farmer knows that the remedy for the weeds, which infest his fields, is not in the plow, the hoe, and the team, but in the seasonable use and application of them; and that his crop is not to be affected indirectly and collaterally only, if he uses them but once, in place of three or four times during the season. But if he shall have experienced by providential visitation, or otherwise, a loss of a portion of his team, or a diminution of his laboring hands, he will be constrained to use the plow and the hoe more frequently toward the extermination of the weeds than he had inclined, or intended to do, or would have done under more prosperous circumstances.

But there is an obvious distinction in the nature of things between right and remedy. The laws which relate to right enter into and form an essential part of the obligation of every contract and can not be altered without impairing it. The laws of remedy are in the breast of the Legislature, and may be altered or amended as its discretion shall direct. This has been attempted to be shown (it is hoped successfully) by inferences drawn from first principles. It will now be considered upon the ground of authority. The first case referred to will be found in 1 Bibb, 561–9. It is the opinion of the Appellate Court of Kentucky, composed of Justices Bibb, Boyle, Wallace, and Trimble. It is in the following words: "Upon the propriety of the remedy by petition and summons in this case, notwithstanding the specialty was given previous to the statute we can have no doubt. The statute is general as to the description of direct debts, whether they have commenced before or shall exist after the passage thereof. The statute does not change the essence of the contract; it is the mode of recovery only which is changed. If the proper distinction is observed between those laws which have reference to the essence, nature, construction, or extent of the contract, and those which have reference only to the mode of enforcing the contract, the question will be plain. The *lex temporis* must be regarded in giving a decision upon the essence and nature of the contract. The laws existing at the time of seeking to enforce the contract must govern and determine the kind of suit which may be brought—the means afforded by the laws for enforcing a contract, in case of breach of non-compliance, makes no part of the contract. If the parties to the contract act in good faith, they intend to perform the stipulations, and, therefore, can not be supposed to have stipulated for dilatory proceedings, in a suit for enforcing the contract. The modes of bringing suit, and of execution, are distinct from, and make no part of, the contract itself. They do not enter into the essence of the contract. So the forms of suit, and of execution, in our own country, at this time, or at that, make no part of a contract, at the one time or the other, and the Legislature is at liberty to adopt this or that mode of enforcing contracts, which the circumstances of the country may suggest as expedient." This doctrine was afterward reiterated and affirmed by the same Court in the case of Reardon vs. Searcy's heirs—reported in 2 Bibb, 103–5. The Court was then composed of Chief-Justice Boyle and Justices Wallace, Logan, and Clark. The following is their opinion, so far as relates to this subject: "It is certainly a well-settled rule that the law, at the time the contract is made, composes a part of it, so far as relates to the nature and construction of such a contract; but equally well-settled that the remedy to enforce such contract must be according to the law in force at the time such remedy is sought. The subjecting property to execution, which was not so at the time the contract is made, does not, in the slightest degree, impair the contract, it only extends and enlarges the remedy. Contracts are not made with an eye to the law that shall enforce them, or to what property shall, or shall not, be liable to execution, but with an expectation of each party's performing with good faith what he has stipulated to do." This distinction between right and remedy thus solemnly uttered and reiterated from the Appellate tribunal of the State, with the sanction and concurrence of the chief-justice, is noticed by him in the late decision, with the passing remark, that the point settled in the former case was, that a contract for a direct payment of money, entered into before the passage of the petition and summons law, might be enforced under the provisions of that law, and that in the latter case the point settled was, that lands might be sold under execution for the payment of debts contracted before the passage of the law subjecting lands to sale under execution for the payment of debts.

It seems to have escaped the recollection of the chief-justice that he had, with his brother justices, in the case of Graves vs. Graves' executor, affirmed the distinction

between right and remedy so strongly, and so justly taken in the two cases just quoted. The opinion in that case was penned and delivered by the chief-justice himself, and is to be found 2 Bibb, 208—his language in relation to adoption of right and remedy follows: "With respect to the *nature* and construction of contracts, and the rights and obligations of parties arising out of them, the principle is well settled that the law of the place where the contracts were made is to govern; but with regard to the remedy, the principle is equally well-established, that the law of the country, where the contract is sought to be imposed, ought to be the rule of decision. The statute of limitations does not affect the validity of the contracts, but the time of enforcing it, or, in other words, it does not destroy the right, but withholds the remedy."

Wherever we find the remedial power to exist, whether among erratic hordes, in a state of nature, or among people in civil society, we find it exercised according to the discretion of those in whose hands it is placed. In the case of the Bank of Columbia vs. Okely, reported in 4 Wheaton, 244–5, the Appellate Court of the United States hold the following language on this subject: "In giving this opinion, we attach no importance to the idea of this being a chartered right in the bank. It is the remedy, and not the right; and, as such, we have no doubt of its being subject to the will of Congress. The forms of administering justice, and the duties and powers of courts, as incident to the exercise of a branch of sovereign power, must ever be subject to legislative will, and the power even therein is unalienable so as to bind subsequent Legislatures." And in the same book (page 200–1) the same court, in the case of Crowninshield vs. Sturges, speaks as follows upon this subject: "But a still more satisfactory argument is, that the convention did not intend to prohibit the passage of insolvent laws. To punish honest insolvency by imprisonment for life, and to make this a constitutional principle, would be an excess of inhumanity which will not readily be imputed to the illustrious patriots who formed our Constitution, nor to the people who adopted it. The distinction between the obligation of a contract and the remedy given by the Legislature to enforce that obligation, has been taken at the bar, and exists in the nature of things. Without impairing the obligation of contracts, the remedy may certainly be modified as the wisdom of the nation shall direct. Confinement of the debtor may be a punishment for not performing his contract, or may be allowed as a means of inducing him to perform it. But the State may refuse to inflict this punishment, or may withhold this means, and leave the contract in full force. Imprisonment is no part of the contract, and simply to release the prisoner does not impair its obligations."

The doctrine recognized in the cases just quoted from Wheaton, was affirmed by the Supreme Court of the United States in the case of McMillon vs. McNeil, reported in the same volume, the case which the chief-justice finds so difficult to understand, and, therefore, devotes it to the fate which he inflicts upon the remedial laws of the State—repeals and vacates it. In that case, the Supreme Court, pursuing the distinction laid down in the case of Crowninshield vs. Sturges, between right and remedy, determined that a law of the State of Louisiana, which provides that a debtor who shall surrender his effects for the benefit of his creditors, shall be absolved from the payment of all the debts which he may have at the time of such surrender, was unconstitutional, whether the debts thus declared to be discharged were contracted before or after the passage of that law. Whether passed before or after the contract was made could not be material, for, by the contract, the creditor had a right to his money, and to recover it according to the remedial laws of that State. But the law discharged the debtor from the payment of it, and, therefore, no matter when it passed, impaired or, rather, destroyed, the obligation of the contract, and was, therefore, void. The law, evidently, went to the extinction of the right, and not to the modification of the remedy. The chief-

justice having taken it for granted that the only law of right was to be found in the law of remedy, and mistaking the law of Louisiana for a law entirely remedial, and having settled it in his own mind that a remedial law might be enacted to operate prospectively, and the contract in that case having been made after the passage of the law, he was at a loss to see why it should not operate upon the contract, so as to discharge its obligation, the obligation consisting, according to his theory, in the remedy alone. He seems to have overlooked the laws which regulate right, and entered into the essence of the obligation of contracts, in the expectation of finding that obligation in the laws of remedy. The laws of nature, when well understood, are the perfection of reason, the common law is the perfection of reason. Therefore the laws of nature and common law are the same. The common law is made by the constitution which adopts it the law of this State. Whatever duties, therefore, the laws of nature exact from the conscience of men, in relation to obligations of the perfect sort, the common law makes the same exactions, and gives to the obligation legal force and effect, or, as jurists say, unites the external to the internal obligation, and binds the parties to the performance of it.

The common law rules in relation to the validity, obligatory force, and binding effect of contracts, are known to all lawyers; though all may not have traced them up to the laws of nature—their true and legitimate source. Those rules require that the parties to a contract must be able to contract; that is, they must have arrived at the age which indicates competent maturity of discretion; they must not labor under disability at the time of contracting; they must possess sanity of mind and memory; they must be in a situation to exercise freedom of will, and they must exert that freedom of will in the formation of the contract. The subject matter of the contract must be legitimate—unforbidden by conscience, or what is the same thing, law—for law and conscience unite in the consecration of all the ingredients which enter into the essence of a contract in civil society. These are some of the rules of law in relation to the validity of contracts which can not be impaired by any legislative enaction; from these the legal obligation of a contract flows; and the remedy furnished by the Legislature, instead of constituting the legal obligation, is only to be used when that obligation has been violated, to obtain reparation for its infraction. The Appellate Court would seem to have mistaken the means for the end; the effect for the cause; the remedy for the disease; a broken contract, a violated obligation, is the disease. The Legislature enacts the remedial laws, the courts administer them, and the cure is effected. The process is sometimes rapid and sometimes tardy; and, more or less so, according to the morbid or salubrious state of the social atmosphere. This radical mistake into which the court has fallen, in relation to the laws of right and remedy, runs through the decision and taints all the illustrations which it employs.

The first case selected by the chief-justice, to illustrate the new theory, is that of the parol contract for land under the statute of frauds and perjuries, which, he says, is not obligatory, because the statute denies remedy for its violation. He forgets that the very denial of the remedy is an implied admission of the contract; indeed, the statute is predicated, upon not only the tacit admission, but the avowed fact that those contracts possessed at common law inherent legal obligation; and the statute denies remedy to cases of that kind, not because of their destitution of legal obligation, but because in the application of the remedy for their infraction, there was danger that more injustice would be done by perjuries and frauds, in its application than by withholding it; and even since the statute, where a contract of that character has been so sanctioned by part performance, that the fraudulence of refusing to complete it, overbalances the dangers of the frauds contemplated by the statute; or where the danger of the perjuries con-

templated by the statute are avoided by the admission of the contract by the defendant in his answer. Their intrinsic legal obligation is recognized and they are decreed to be carried into effect, by all the courts in England and America, where technicality has not the ascendency over great first principles.

The chief-justice was not less unfortunate in his illustrative selection of the statute of limitations. That statute decrees or withholds the remedy, not upon the ground that the remedy is the legal obligation of the contract, which it bars, but upon the presumption that the obligation has been discharged by payment. The reasonable presumption in relation to every man, is, that he will be attentive to his interests. The obligee is presumed, from the length of time in which he has forborne to assert claim, to have no claim; or, in other words, the claim which he had is presumed to have been discharged, and, therefore, and not because the contract had no legal obligation other than the remedy—the remedy is withheld by the statute.

The quotation from Pothier will be found, upon examination, not to have been more felicitous than the last. That author who deserves the eulogies bestowed upon him by the chief-justice divides obligations into three classes. First, natural and civil; second, civil obligations; third, natural obligations. "Obligations are commonly," he says, "both civil and natural. There are, however, some which are merely civil obligations, without being also natural, to the performance of which the debtor may be constrained by law, although they are not binding in conscience. Such is the obligation which results from a judgment, erroneous in law or fact when the time within which it might have been reversed is past, or from an unjust judgment from which there is no appeal. In either case, the defendant is bound by the judgment, and may be constrained by legal means to pay what, in conscience, he does not owe. It is the authority of the judgment *rei judicatæ*, which forms this obligation." The obligations which are natural and civil are the common cases of contract, above alluded to, in which the obligation of common law unites with the obligation of conscience, and constitutes the legal obligation, which the Appellate Court thinks is only to be found in the remedy. The case quoted by the chief-justice is of a merely civil obligation, *vinculum juris*, and is exemplified by Pothier, in the case of a judgment at law, which is erroneous, but which, owing to the lapse of time, or some other cause, can not be reversed, in which case he tells us the defendant is bound, not by the remedy, but by the judgment, and may be constrained by legal means to pay it. By the judgment he is bound; the obligation, then, is in the judgment, and not in remedy. He may be constrained by legal means (viz: the remedy) to discharge the judgment by which he is bound, in which this merely civil obligation exists. Natural obligations are binding only in honor, but, according to the chief-justice, natural and civil obligations are *per se* of the same sort, and have no legal obligation but what is to be found in the remedy.

When a suit is commenced upon a contract, that contract is either obligatory, or is not obligatory; if it is not obligatory, the suit is fruitless—no judgment can be pronounced upon it; if it is obligatory, the suit is brought because its obligation has been violated; not because the remedy has been violated; the remedy is afforded only upon the prediction that the obligation has been broken. When the case comes before the judge, he does not look forward into the laws which regulate the process of remedy, but he looks upon the contract; the situation and condition of the parties; the circumstance under which it was made; the fairness practiced by each party in the formation of it, and he ascertains by this kind of examination what was the will and intention of the parties, in relation to the subject matter of the contract, and thus ascertain the nature and extent of the obligation; for will is at the foot of all obligation. He next ascertains by the appropriate inquiries that the obligation has been violated, and applies the

remedy afforded by the Legislature, according to the remedial laws. It would certainly be idle in the judge, before he had ascertained that such obligation had been incurred by either party to the contract, to inquire what kind of execution might be issued, whether it could be stayed by writ of error, suspended, or replevied; and that, too, with the intent of ascertaining whether he had, by his contract, incurred any obligation. It would be to invert the order of nature; to mistake the consequences for the cause. Execution is most evidently not the cause, but the consequence of judgment. We would smile at the man and deride his pretensions to philosophy who would tell us that the prolific and vivifying influences of light and heat, produced in the sun, the power, and imposed upon it the duty of emitting light and heat. That the solar concoctions with which our senses are regaled were the cause, and not the effect, of solar radiance. The benign influences of a wise remedial system, in civil society, upon the condition of its members, may be assimilated to the effects of physical causes upon the material world.

The remedial systems throughout the civilized world, are predicated upon the fact, that the contracting parties confide in each other, that each will perform his contract according to its stipulations, within the time agreed upon, and that neither of them looks to, or thinks of, the existing remedial system, as constituting the obligation which he incurs by the contract; and that the Legislature possesses the power of altering, or amending, that system as experience or emergencies shall dictate the propriety of doing so. This course has the sanction of reason, as well as practice; it is even enjoined by necessity—for when a stipulation for a performance within a given time has been violated, no sovereign of which we can conceive, can compel its performance within the time. It is irreclaimably gone; it is with the days behind the flood. All that the sovereign can do is to award to the creditor an equivalent for the injury inflicted upon him by its violation. If the obligation of the contract, so far as relates to the time of its performance, is the time of replevin allowed by law, then the suit must always be instituted before the obligation is violated in that particular, which is believed to be inadmissible, if not absurd; for it is a settled rule of law, as well as of reason, that a suit for the violation of the obligation of a contract, can not be instituted until the time of its performance has passed away. Believing, therefore, that the decision of the Court of Appeals displays an exertion of judicial power not conceded to that department by the Constitution of the State, greatly injurious, if not ruinous, in its practical effects, to very many of the good citizens of this State, and incompatible in the principle which it asserts, with the great and essential rights of civil liberty; with the fundamental principles of republican government, and with the best interests, prosperity, and happiness of the community, which are, and, indeed, must forever remain, indissolubly associated with those sacred principles.

The members of the Legislature, while they admit the power of the court to declare any law unconstitutional and void, which is obviously and palpably so, feel themselves reluctantly constrained, by the most solemn obligations of duty, obligations of duty to themselves, to their constituents, to posterity, and to the principles of rational liberty throughout the civilized world, to make their deliberate protest against the erroneous and usurping doctrines of that decision.

NOTE C, PAGE 212.

THE SHOOTING OF JAMES GUTHRIE BY JOHN HAYES.

Since writing the sketch of John Hayes, the author has encountered a version of the affair between that unfortunate man and James Guthrie, materially variant from that already given. This account was written in 1860, during Mr. Guthrie's lifetime, and if not authorized by him, it was put forward as embracing the facts as his friends desired the public to understand them. It seems but just to his memory, that this account, which may be regarded as his side of the case, should accompany the statement in the sketch of Hayes. It is taken from a brief biography of Mr. Guthrie, published in Savage's Living Representative Men. Some of its statements are manifestly erroneous, notably that locating the scene of the difficulty at Louisville, instead of Bardstown, and another, that popular indignation drove Hayes from either place. The following is an extract from Mr. Savage's book: *

"It was about this period" (referring to Mr. Guthrie's residence in Bardstown) "and while still a young man, that he had his noted difficulty with Hayes. The latter was a member of the old Federal party, a man of brilliant talents, who looked with disfavor upon what he regarded the presumption of young Guthrie in assuming a position of equality with himself and others of more experience and standing at the bar. Guthrie was not the man to brook intolerance or intimidation; and it is understood that on an occasion of some public discussion, he, stung by what he deemed a combination to put him down, spoke with severity of the course and conduct of the ring leader—Mr. Hayes. Nothing immediately occurred. A few days afterward, and when Mr. Guthrie supposed the offense blown over, he was sitting on the steps of the Galt House, at Louisville, one afternoon, in company with several other gentlemen, amusing himself by whittling a stick. Happening to raise his eyes, he perceived Hayes at the distance of about six or eight yards, advancing upon him with a pistol already cocked and pointed. Guthrie instantly sprang upon him with the vigor of a tiger, receiving Hayes' fire as he advanced, the bullet passing through the right groin. Raising himself upon his sound limb, he jerked the pistol out of his adversary's hand, and was in the act of bringing it down upon his head, with a force that would have killed him—Hayes crying 'murder' all the time at the top of his voice—when the gentlemen who had followed him from the steps arrested his arm, and carried him back to the hotel. By these means, no doubt, the life of Hayes was saved. Mr. Guthrie's wound proved to be one of the utmost severity. He was confined by it to his bed for years, and even now, having left a slight twist in his leg, it occasions him some difficulty in his walk. The popular indignation drove Hayes from the place. His fondness for the bottle increased, and in a fit of *mania potu* he committed suicide by dashing his head against a wall."

NOTE D, PAGE 288.

THE CENTER OF THE WORLD.

The following solution of the above-important question was originally embraced in Chapter XXI. The speech was first published in the "Drawer" of Harper's Magazine, prior to the late war, and attributed to Mark Hardin. There were two Mark Hardin's

* Page 292.

in Kentucky at the period the speech is supposed to have been delivered, both of good ability, but, without detailing the reasons for such a conclusion, it is sufficient to say that intelligent persons, in a position to judge, have decided that neither of these, but Ben Hardin was its author. While this work was in press, an intelligent friend has communicated his doubts as to this conclusion, expressing his opinion that John E. Hardin was more probably the orator on the occasion. That this suggestion is erroneous, could be easily shown by unpleasant reminiscences of that gifted but greatly erring man. The speech is very much in the vein of Ben Hardin, and from internal evidence might reasonably be attributed to him—but since the matter is in question, it has been translated to the Appendix, and its paternity is submitted to the decision of the critical readers of this work.

By way of introduction, it may be observed that no greater folly has marked the legislation of Kentucky than the needless multiplication of counties. The only imaginary apology for it is, that it springs from an overzeal in behalf of the principle of self-government. Neighborhood becomes arrayed against neighborhood, or an enterprising village seeks to rival the village that is the county seat, and therefrom originates a new county scheme. The "project" (and so it is usually designated) becomes an issue in county politics, and small but earnest and energetic statesmen make it their hobby. The matter is rolled round and round, like a school-boy's snowball, accumulating astonishing bulk in a small area, until what at first was arrant pretense assumes the proportions of inevitable reality.

"We all know how this thing is started," said Mr. Hardin in the constitutional convention, "and there is no end to it when it is started. A man wants to be a county clerk, and he will press it; and here is a man out of office, and he will press it; and then there are men who want the seat of justice nearer their town, and they will press it; and where there is a little miserable town at the cross-roads, the people there will press it; so it is that a thousand little petty interests are brought to bear in making new counties."

When the formation of Larue county was being agitated, Mr. Hardin opposed it. He spent some time at the State capital, during the sitting of the Legislature, seeking to defeat the measure. Hodgenville was the prospective seat of justice of the new county, and its citizens were not unnaturally disposed to "press it." Happening in that town on the occasion of a political gathering, when the new county project was receiving a most favorable consideration, Mr. Hardin, not waiting invitation, took the stand for a speech. His known hostility to the project caused his audience, at the outset, to give him the "cold shoulder." Not at all discouraged, however, he proceeded with his remarks as follows:

"Fellow-citizens, I hear everywhere that there is a decided wish to divide Hardin county, and some, I regret to say, oppose it. Why? I ask, why? fellow-citizens. Look at this end of Hardin. It comes out of the way. It is detached naturally from Hardin. It projects like the toe of a boot; and, fellow-citizens, the toe of that boot ought to be applied to the blunt end of any candidate who opposes this just, proper, and natural division. (Cheers.) Having shown you that this end of the county is thus by nature, and should be divided by law from the other, my next consideration is the county seat. To gentlemen as intelligent as you, and as familiar with the section to be divided off, I need not point out that Hodgenville will be the center of the proposed county; and where, but at the center, should the county seat be? (Cheers.) Gentlemen, you have doubtless heard the removal of our State capital spoken of. As it is, it is tucked up in a north corner of the State, where it is about as convenient a situation for the capital of the whole State as Elizabethtown (the county seat of Har-

din) is to be the county seat of your proposed new county. The same reasons that induce us to separate this part of the county from the other should make us move the capital. We must move it, and to the center of the State. Now take a map. Kentucky is four hundred and twenty miles long, by about one hundred and forty wide in the center. Now the new county will be on a perpendicular line just seventy miles from the Ohio River, and two hundred and ten from each end of the State, and Hodgenville is the center of the new county. I have thus mathematically demonstrated to you that the State capital should be removed to Hodgenville. (Enthusiastic cheering.) Fellow-citizens, I have been inadvertently led into these questions, but I will proceed farther. In the late war (the war of 1812) Washington City was burned by the British, and why? Because it was our exposed border. The National capital should be removed from the Atlantic coast, and to the center of the Union. Kentucky is the great seal set in the center of our mighty republic, as you will see by enumerating the surrounding States, and, as I have already shown you that this is the center of Kentucky, it follows that the National capital should be removed to Hodgenville." As some had begun to smell a large Norway by this time, the cheering was not quite so loud. "Nay," said the orator, in a burst of enthusiasm, "Hodgenville is the center of God's glorious and beautiful world?"

"How in the devil do you make that out?" said an irritated voice in the crowd.

The speaker, drawing himself up, and sweeping his forefinger in a grand circle around the horizon, said: "Look how nice the sky fits down all around!"

NOTE E, PAGE 581.

BOOKS RELATING TO BEN HARDIN, AND IN WHICH HE IS MENTIONED.

Why We Laugh. By Samuel S. Cox.
Thirty Years' View. By Thomas H. Benton.
Life and Speeches of Henry Clay. By Daniel Mallory.
Life of J. J. Crittenden. By Mrs. Chapman Coleman.
History of Kentucky, two volumes. By Richard H. Collins, A. M., LL. B.
A History of Kentucky. By William B. Allen.
History of Kentucky. By Z. F. Smith.
Life of George Robertson. Written by himself.
Constitutional and Political History of the United States. By H. Von Holst.
Flush Times of Alabama and Mississippi. By Joseph G. Baldwin.
Memoir of S. S. Prentiss. By his brother.
Life of Seargant S. Prentiss. By Shields.
Scrap Book on Law and Politics. By George Robertson, LL. D.
Speeches and Writings of Thomas F. Marshall. By W. L. Barre.
Centenary of Catholicism in Kentucky. By Hon. Ben J. Webb.
Spencer's History of Kentucky Baptists.
Three Decades of Federal Legislation. By Hon. Samuel S. Cox
Bill Smothers. By Hon. Thomas C. McCreery.
Life of L. W. Powell. By Ben J. Webb.
Life of J. L. Helm. By Ben J. Webb.
Appleton's Cyclopedia of Biography.
American Encyclopedia.
Niles' Register.

Annals of Congress (1787-1824).
Congressional Debates. By Gales and Seaton (1824-1837).
Debates of Kentucky Convention of 1849.
Memoirs of John Quincy Adams. By C. F. Adams.
Bench and Bar of the South and South-west. By Henry S. Foote.
Leisure Hours. By James R. McConochie, M. D.
Old Guard. Edited by Thomas F. Marshall.
Davy Crockett Almanacs.
History of Methodism in Kentucky. By Rev. A. H. Redford.
Memoirs of the Life of Rufus Choate. By Professor S. C. Brown.
Living Representative Men. By John Savage.
Presbyterian Expositor. By N. L. Rice.
Biographical Encyclopedia of Kentucky (1878).
Perrin's History of Kentucky.
The Law of Homicide. By A. B. Carlton, LL. B.
Decisions of Supreme Court of United States.
Reports of decisions of Kentucky Court of Appeals from Hardin to Ben Monroe.
Legislative Journals of Kentucky.
Early Bench and Bar of Illinois. By W. F. Lindner.

NOTE F, PAGE 609.

BEN HARDIN'S WILL.

STATE OF KENTUCKY, NELSON COUNTY.

I, Ben Hardin, of Bardstown, State of Kentucky, do, this 18th day of August, 1852, make and constitute this my last will and testament, hereby revoking all wills heretofore made by me.

I will and desire that my estate, real, personal, and mixed, in possession, remainder, or reversion, be divided into six equal parts; one part to be allotted to Lucinda B. Helm; one part to Kate T. Riley; one part to Sally Dixon; one part to James Hardin's children; one part to Rowan Hardin's children; one part to Emily Palmer's children. I do further will and desire that if any of James Hardin's children die before they are twenty-one years of age, or without children, their portion will go to the surviving sister or sisters. If any of Rowan Hardin's children die before they are twenty-one years of age, or without children, their portion shall go to the surviving brothers and sisters; and if any of Emily Palmer's children die before they are twenty-one years of age, or without children, their portion shall go to the surviving brothers and sisters.

I request that the children of Rowan Hardin be supported out of my estate, at the discretion of my executors, until the division of my property takes place, as directed by my will. I do direct my executors, hereafter to be named, to sell and convey any part of my estate that may be necessary to be applied to the payment of my debts.

Lastly, I constitute John L. Helm, Thomas P. Linthicum, and William Johnson, my executors, and direct that in the sale and conveyance of any of my property it shall be with the concurrence of two of my said executors.

BEN HARDIN.

Signed in the presence of
WILLIAM MCALLEN,
W. A. HICKMAN,
JOHN MORTON.

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